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# **Elder and Long Term Care Committee**

**Wednesday, March 8, 2006  
10:00 AM – 12:00 PM  
Reed Hall (102 HOB)**

**Meeting Packet**

# **Committee Meeting Notice**

## **HOUSE OF REPRESENTATIVES**

**Speaker Allan G. Bense**

### **Elder & Long-Term Care Committee**

**Start Date and Time:** Wednesday, March 08, 2006 10:00 am

**End Date and Time:** Wednesday, March 08, 2006 12:00 pm

**Location:** Reed Hall (102 HOB)

**Duration:** 2.00 hrs

#### **Consideration of the following bill(s):**

HB 49 Caregivers for Adults by Meadows

HB 243 Hearing Aid Specialists by Kendrick

HB 947 Long-Term Care Coverage by Legg

HB 1067 State Long-Term Care Ombudsman Program by Grimsley

HB 7027 Review under the Open Government Sunset Review Act regarding Long-term Care Facilities by  
Governmental Operations Committee

Presentation by Office of Program Policy Analysis & Government Accountability on Report 06-01, Service Use  
for Nursing Home Diversion Waiver Clients Depends on Living Situation

Presentation by Medicaid Fraud Control Unit of the Office of the Attorney General relating to elder protection  
initiatives

**NOTICE FINALIZED on 03/06/2006 15:21 by MANNING.KAREN**



**House of Representatives**

**Elder and Long Term Care Committee**

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**A G E N D A**

**March 8, 2006  
10:00 AM – 12:00 PM  
Reed Hall (102 HOB)**

- I. Opening Remarks by the Chair**
- II. Consideration of the following bill(s):**
  - HB 49 Caregivers for Adults by Meadows**
  - HB 243 Hearing Aid Specialists by Kendrick**
  - HB 947 Long-Term Care Coverage by Legg**
  - HB 1067 State Long-Term Care Ombudsman Program by Grimsley**
  - HB 7027 Review under the Open Government Sunset Review Act regarding Long-term Care Facilities by Governmental Operations Committee**
- III. Presentation by Office of Program Policy Analysis & Government Accountability on Report 06-01, Service Use for Nursing Home Diversion Waiver Clients Depends on Living Situation**
- IV. Presentation by Medicaid Fraud Control Unit of the Office of the Attorney General relating to elder protection initiatives**
- V. Closing Remarks by the Chair**
- VI. Adjournment**

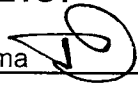
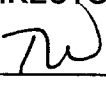


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 49  
**SPONSOR(S):** Meadows  
**TIED BILLS:**

Caregivers for Adults

**IDEN./SIM. BILLS:** SB 88

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Elder &amp; Long-Term Care Committee</u>		DePalma 	Walsh 
2) <u>Community Colleges &amp; Workforce Committee</u>			
3) <u>Health Care Appropriations Committee</u>			
4) <u>Health &amp; Families Council</u>			
5) _____			

### SUMMARY ANALYSIS

HB 49 creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within the Florida Policy Exchange Center on Aging (FPECA) at the University of South Florida. Its mission is to foster the development of caregiving for adults as a non-licensed paraprofessional activity and promote the use of nationally recognized best practices information by non-licensed caregivers.

The bill creates a 13-member board of directors of the corporation, and provides for membership and responsibilities.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed to conduct an evaluation and review of the corporation and to provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2009.

The effective date is July 1, 2006.

The fiscal impact of this bill is undetermined. Please see "Fiscal Comments" for further information.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within the Florida Policy Exchange Center on Aging at the University of South Florida. Membership on the board of the corporation consists of representatives from the private sector and from various state agencies. One of the functions of the corporation is to provide training to employees of private businesses.

#### B. EFFECT OF PROPOSED CHANGES:

In summary, HB 49 creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within the Florida Policy Exchange Center on Aging (FPECA) at the University of South Florida. Its mission is to foster the development of caregiving for adults as a non-licensed paraprofessional activity and promote the use of nationally recognized best practices information by non-licensed caregivers. Following is background information and a detailed description of the legislation.

### **BACKGROUND**

#### **Caregiving**

About 10.1 million people over the age of 18 in the U.S. – nearly 4 percent of the population – need another person's assistance to carry out activities such as bathing, feeding, cleaning, or grocery shopping.<sup>1</sup> Within this group, nearly 80 percent of care recipients are 50 and older, and the average age of care recipients 50 and older in the U.S. is 75.<sup>2</sup> Most care recipients (79 percent) who need long-term care live at home or in the community,<sup>3</sup> and those individuals living in nursing homes and other institutional settings could potentially live in the community if appropriate, affordable support was available.<sup>4</sup>

Depending on which definition of "caregiver" and "care recipient" is utilized, there is wide latitude in estimates of the precise number of caregivers in the U.S.<sup>5</sup> A 2004 study coordinated by the National Alliance for Caregiving and the AARP concluded that 44.4 million Americans (21% of the population) provided unpaid care to friends and family age 18 and older.<sup>6</sup> Moreover, 59% of these U.S. caregivers reported being presently employed, and while the services they provide to care recipients are unpaid, the value of such services has been estimated at \$257 billion annually.<sup>7</sup> Nearly 20% of caregivers in the U.S. provide more than 40 hours of care per week,<sup>8</sup> and the overall amount of time spent caring for

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<sup>1</sup> McNeil, Jack. 2001. *Americans with disabilities: Household economic studies*. Washington, DC: US Department of Commerce, Economics and Statistics Administration, US Census Bureau.

<sup>2</sup> *Caregiving in the U.S.*, 2004, National Alliance for Caregiving and AARP, available at <http://www.aarp.org/research/reference/publicopinions/aresearch-import-853.html>.

<sup>3</sup> *Long-term Care Users Range in Age and Most Do Not Live in Nursing Homes: Research Alert*, 2000, Agency for Healthcare Research and Quality, available, in part, at <http://www.ahrq.gov/research/nov00/1100RA19.htm>.

<sup>4</sup> *Understanding Medicaid Home and Community Services: A Primer*, 2000, U.S. Department of Health and Human Services. Available at <http://aspe.hhs.gov/daltcp/reports/primer.pdf>.

<sup>5</sup> *Fact Sheet: Side-by-side Comparison of Family Caregiver Prevalence Studies*, Family Caregiver Alliance, 2001, available at [http://www.caregiver.org/caregiver/isp/content/pdfs/fs\\_caregiver\\_stats\\_side\\_by\\_side.pdf](http://www.caregiver.org/caregiver/isp/content/pdfs/fs_caregiver_stats_side_by_side.pdf).

<sup>6</sup> *Caregiving in the U.S.*, National Alliance for Caregiving and AARP.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

another increases substantially as the care recipient's cognitive impairment worsens.<sup>9</sup> In terms of lost productivity to American businesses, informal caregiving results in an \$11-29 billion loss annually.<sup>10</sup>

Although family members and friends provide most of the needed assistance for people in home and community-based settings, home care workers, personal assistants, direct support professionals and other direct-care workers are a critical resource for many. Individuals and families rely on these workers to provide them with comfort, companionship, and care in an atmosphere that preserves their dignity and well-being. Such workers are already in short supply in many regions and demand is expected to grow rapidly, due to a combination of consumer demand and changes in public policy.

Nursing homes, assisted living facilities, and adult family care homes employ both licensed and unlicensed staff responsible for providing medical, nursing or personal care assistance to their residents, enabling them to live as independently as possible. The requirements for staff training and education vary depending on the setting and the specific job responsibilities of the caregiver.

Although the Omnibus Budget Reconciliation Act of 1987 enhanced the training required of certified nursing assistants in nursing homes and home health aides in certified home health agencies, federal funds allocated for health care training are typically reserved for the development of various medical professionals (doctors, nurses, etc.). Consequently, there are limited resources available to address the training needs of paraprofessional caregivers who work in nursing homes, assisted living facilities, adult day care centers, and private residences.

### **Assisted Living Facilities**

Assisted Living Facilities (ALF) are residential care facilities that provide housing, meals, personal care, and supportive services to older persons and disabled adults who are unable to live independently. The facilities are licensed under Chapter 400, part III, F.S., and are intended to be a less costly alternative to more restrictive institutional settings for individuals who do not require 24-hour nursing supervision. Generally speaking, ALF provide supervision, assistance with personal and supportive services, and assistance with administration of medications to elders and disabled adults.

Nationally, it is estimated that an excess of 600,000 seniors currently reside in an ALF. In 2000, Florida's 2,305 assisted living facilities alone housed approximately 75,000 residents. Facilities operating on a for-profit basis account for the majority of the state's ALF, as more than 83% of Florida's ALF function as for-profit enterprises.<sup>11</sup>

In addition to a standard ALF operating license, there are three "specialty" ALF licenses: extended congregate care (ECC), limited nursing services (LNS), and limited mental health (LMH). An ALF holding an ECC license may provide additional nursing services and total assistance with personal care services. Residents living in ECC-licensed facilities may have greater impairment levels than those living in a standard ALF. Residents living in an ALF holding a LNS or LMH license must meet the same residency criteria as a standard-licensed ALF. Regardless of the facility's license status, residents living in ALF cannot have conditions that require 24-hour nursing supervision.<sup>12</sup>

**Administrators, managers, and staff of ALF are required to obtain specific training and education** pursuant to s. 400.452, F.S., and Rule 58A-5.0191, F.A.C. Training requirements are specific to an individual's responsibilities within the facility; the Department of Elder Affairs (DOEA)

<sup>9</sup> *National Estimates of the Quantity and Cost of Informal Caregiving for the Elderly with Dementia*, 2001, Journal of General Internal Medicine, Volume 16: 770-778.

<sup>10</sup> The MetLife Study of Employer Costs for Working Caregivers (based on data from "Family Caregiving in the U.S.: Findings from a National Survey"), 1997, Metropolitan Life Insurance Company, available at <http://www.metlife.com/WPSAssets/14002396171048285176V1FEmployer%20Costs%20study%20.pdf>.

<sup>11</sup> *Florida's Aging Population: Critical Issues for Florida's Future*, 2<sup>nd</sup> Edition (2004), Pepper Institute on Aging and Public Policy, FSU College of Social Sciences.

<sup>12</sup> An exception is made for an existing resident who is receiving licensed hospice services while residing in an ALF.

establishes minimum training and education requirements by rule. Facility staff is required to participate in training relevant to their job duties as specified by rule. Depending on the staff and particular facility, required training may include ongoing staff in-service training, HIV/AIDS training, first aid, CPR, assistance with self-administered medication, nutrition and food service, extended congregate care training, or limited mental health training. Facilities that advertise that they provide special care for persons with Alzheimer's Disease and related disorders must ensure that facility staff receives training in this area.<sup>13</sup>

### **Adult Family Care Homes**

An adult family care home (AFCH) is a familial-oriented living arrangement in a private home. AFCH are licensed in accordance with Chapter 400, part VII, F.S. to provide room, board, and personal care on a 24-hour basis for up to five residents as an alternative to more restrictive institutional settings for individuals who need housing and supportive services, but not 24-hour nursing supervision. The provider must own or rent and live in the home operating as an AFCH, and staff in AFCH are either employed by, or under contract with, the provider.

Prior to accepting any residents or becoming licensed, **all AFCH providers must attend a 12-hour Adult Family Care Home Basic Training program** that conforms to the minimum requirements of s. 400.6211, F.S. Additionally, the AFCH provider is required to annually obtain 3 hours of continuing education in topics related to the care and treatment of frail elders or disabled adults, or the management and administration of an AFCH, and providers must attend update training when the basic course is updated by legislation or through rule amendment.<sup>14</sup>

Prior to assuming responsibility for the care of residents (or within 30 days of employment), an AFCH provider shall ensure that each relief person and all staff receive training relevant to assigned job duties, including emergency/evacuation procedures, universal precautions, food safety, procedures for reporting abuse and neglect, and a review of resident rights. Moreover, providers, relief individuals, and any person left in sole charge of residents must hold a currently valid card documenting completion of First Aid and CPR courses.<sup>15</sup>

### **Adult Day Care Centers**

Adult Day Care Centers (ADCC) are licensed under Part V of Chapter 400, F.S., to provide a variety of therapeutic, social, and health activities and services to adults who have functional impairments, in an effort to help restore, remediate, or maintain optimal functioning and increase interaction with others in a non-institutional setting. Participants may utilize a variety of services offered during any part of a day but less than a 24-hour period.

**Training requirements of staff employed by an ADCC vary based upon the work performed by the individual.** All staff employed by an ADCC must receive basic written information about interacting with participants who have Alzheimer's disease or dementia-related disorders. Section 400.5571, F.S., requires new employees having direct contact with participants who suffer from Alzheimer's disease or other dementia-related disorders to complete certain training within specified time periods.

### **Caregiver Training Providers**

On July 1, 2003 the training component for ALF and AFCH was privatized by DOE<sup>16</sup>. Consequently, ALF and AFCH currently contract with private consultants and associations to ensure that facility staff is

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<sup>13</sup> Rule 58A-5.0191, F.A.C.

<sup>14</sup> Rule 58A-14.008, F.A.C.

<sup>15</sup> Ibid.

<sup>16</sup> During Special Session 2003-A, the Legislature privatized the Department of Elderly Affairs' ALF core training program and the eleven FTE training positions associated with the program were eliminated. Section 3, Chapter 2003-405, L.O.F.



provided with required training. There are 19 training providers statewide, and these providers and the fees charged in connection with training are not regulated by any state agency.

Training providers and facility administrators have expressed concerns about increased staff training costs to facilities, especially those serving Optional State Supplementation (OSS)<sup>17</sup> residents. The Department of Elder Affairs currently contracts with the Institute for Instructional Research and Practice at the University of South Florida to develop testing materials for the ALF Core Training requirements, and administer a caregiver examination.

### **University Research on Aging**

There are a number of research institutes and centers on aging affiliated with Florida's state universities. Each institute has a specific focus for research and policy related to aging and long-term care. Research areas include work and retirement, pensions, long-term care, assisted living, technology and aging, dementia and caregiving, well-being, life satisfaction, the impact of Alzheimer's disease on families and communities, intergenerational relations, Social Security, and health and aging.

Created in 1992, the Florida Policy Exchange Center on Aging (FPECA) at the University of South Florida collects and analyzes information related to older adults, especially older Floridians. The Center informs policymakers, media representatives, scholars and advocates on policies, programs and services for older adults. The Center carries a Type I designation from the State Board of Education, meaning the Center has a responsibility to work closely with faculty and students from all Florida universities who are involved in aging-related research activities.

### **PROPOSED CHANGES**

HB 49 provides the legislative intent to foster the development of caregiving as a non-licensed paraprofessional activity to provide care for frail and vulnerable adults who live in the community, reside in a licensed assisted living facility or adult family care home, or attend an adult day care center; and to promote the use of nationally recognized best-practices information by caregivers in an effort to improve the quality of care and facilitate uniformity of techniques, practices, and standards that are used in caring for the state's most vulnerable residents.

The bill creates the Florida Caregiver Institute, Inc. ("the corporation"). The corporation is created for the purpose of developing best-practices information and disseminating such information to caregivers and vulnerable adults alike. The corporation is to be organized as a not-for-profit corporation in compliance with Chapter 617, F.S., and is not a unit or entity of state government. The corporation is administratively housed within the Florida Policy Exchange Center on Aging at the University of South Florida.

The bill directs the corporation to assist FPECA with the development of policy recommendations to enhance the FPECA's efforts to improve the availability and skills of individuals seeking to work as caregivers in the home or community, or in an AFCH, ADCC, or ALF. The corporation is directed to exercise certain responsibilities including:

- Seeking state, federal, and private funding to provide training in the use of best practices;
- Working with universities, research and policy development centers and other institutions to develop training materials, identify best-practices techniques, and develop a curriculum;

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<sup>17</sup> OSS is a non-Medicaid cash assistance program offered by the Department of Children and Family Services, intended to supplement an individual's income to help pay for costs in an assisted living facility, mental health residential treatment facility, and adult family care home. Calculation formulas and eligibility requirements are available at <http://www.dcf.state.fl.us/ess/ssifactsheet.pdf>, updated July, 2005.

- Conducting a needs assessment of non-licensed caregivers working in the community or facilities licensed under parts III, V, or VII of Chapter 400, F.S.;
- Making recommendations to DOEA, the Department of Children and Family Services (DCF), the Agency for Health Care Administration (AHCA) and the Florida Department of Health (DOH) regarding policy and related changes to help improve the quality, availability, and retention of non-licensed caregivers;
- Making recommendations to the Legislature and Governor on proposed legislative changes and budget-related items; and
- Developing agreements with AHCA, DOEA, DOH, DCF, and other relevant state agencies to allow access to state-owned buildings and state employees to provide training and professional development.

The corporation is further authorized to offer training to staff of ALF, AFCH, and ADCC and to charge a reasonable fee based on a sliding scale to provide the training. DOEA, in consultation with the corporation and the contractor responsible for the development of the training testing materials, must annually evaluate the testing materials.

The bill directs the corporation to collect information regarding non-licensed caregivers who work in the community and in facilities licensed under part III or part VII of Chapter 400, F.S. It specifies that the information collected must include but is not limited to:

- the salary rates for various positions
- professional development needs of non-licensed caregivers
- turnover rates and retention
- the number of caregivers using best-practices information in day-to-day care-related activities.

The corporation must also develop a memorandum of understanding with FPECA describing how the corporation will interact with FPECA in carrying out its responsibilities. The corporation must develop an agreement with FPECA for the center's provision of start-up costs and administrative support, with the expectation that the corporation will not rely on FPECA staff or financial assistance after June 1, 2008. The corporation is authorized to contract with FPECA for the provision of staff support, research, technical assistance, and data storage under a memorandum of agreement.

The bill provides that the board of directors of the corporation is to consist of 13 members who represent the views, interests, and perspectives of the parties, individuals, and stakeholders affected by the activities of the corporation. Each member is to be appointed to a two-year term and may not be reappointed to more than three additional terms with the exception of initial legislative appointments that shall be for three years. The board of directors for the corporation shall include:

- One member appointed by the Florida Association of Homes for the Aging;
- One member appointed by the Florida Assisted Living Affiliation;
- One member appointed by the Alzheimer's Association;
- One member appointed by the Florida Council on Aging;
- One member appointed by the Florida Adult Day Care Association;
- One member appointed by the Florida Respite Coalition;
- One member appointed by the State Long-Term Care Ombudsman;
- Two members appointed by the Governor;
- Two members appointed by the President of the Senate; and
- Two members appointed by the Speaker of the House of Representatives.

HB 49 requires the Governor, President of the Senate, and the Speaker of the House of Representatives to make their initial appointments no later than September 1, 2006. Appointed members serve at the pleasure of the entity that appointed them and may be removed by the appointing entity without cause.

The bill provides that the chair is to be elected by the members and may not serve more than two one-year terms and may not be a state employee. The corporation is directed to adopt by-laws, follow Robert's Rules of Order, and to meet quarterly unless the chair considers it appropriate to meet more often. A majority of the board membership constitutes a quorum. The corporation is directed to make its meetings open to the public and accept input from stakeholders. The chair is responsible for ensuring that accurate meeting minutes are kept and may appoint advisory committees to advise the corporation on particular issues. The chair of the committee may also appoint advisory committees to advise the corporation on specific issues as well as remove a member of the board for three unexcused absences from regularly scheduled meetings. Members of the board and its advisory committees must serve at their own expense.

HB 49 requires the chairman of the board of the corporation to establish an audit committee to annually review and report on the financial condition of the corporation. The committee is to provide to the board members, the Governor, the President of the Senate, and the Speaker of the House of Representatives, by January 10 of each year, a report that includes a complete accounting for all revenues and expenses incurred by the corporation during that year. The bill authorizes the corporation to employ staff, contract with consultants, and otherwise retain the necessary staff, within available fund limits, to accomplish its goals and purposes.

The bill requires the corporation to annually evaluate and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the status of its work relative to promoting the use of best practices by caregivers and developing non-licensed caregivers. This annual report is due by January 10 each year.

HB 49 requires public-sector agencies that provide training or support to non-licensed caregivers who work in the community, ALF, ADCC, and AFCH, to cooperate with the corporation. FPECA is required to certify to the Governor, the President of the Senate, and the Speaker of the House of Representatives – using criteria that includes communication, timeliness of response, and coordination efforts – whether the corporation is receiving the necessary support from the various public-sector entities that provide training to non-licensed caregivers.

The bill directs OPPAGA to conduct a review of the Florida Caregiver Institute, Inc., by October 1, 2009. OPPAGA is required to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives concerning whether the corporation has been effective in helping to improve the retention of non-licensed caregivers in the community and in facilities licensed under parts III, V, or VII of Chapter 400, F.S., and whether it has been successful in promoting the use of best-practice techniques by caregivers who care for Florida's frail and disabled adult population.

The bill provides an effective date of July 1, 2006.

#### C. SECTION DIRECTORY:

**Section 1:** Creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within FPECA; provides purpose, duties and powers of the corporation; provides for a board of directors; provides for membership, terms of office, meetings, and powers and duties of the board; provides for an audit committee; requires annual reports; provides duties for FPECA and state agencies.

**Section 2:** Requires OPPAGA to conduct a review of the corporation by a specified date; requires report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

**Section 3:** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Impact", below.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Corporation will need funding for start-up.

There is an undetermined cost for the corporation to perform the responsibilities assigned by the legislation. These responsibilities include developing training curricula and materials, conducting a caregiver needs assessment, reviewing the need for caregivers in certain areas, developing core training materials, and collecting and reporting information regarding the caregiver population.

### D. FISCAL COMMENTS:

#### **The University of South Florida**

According to the Florida Policy Exchange Center on Aging at the University of South Florida, there will be an estimated cost of \$100,000 for the Exchange Center to support the activities of this corporation.

#### **State Agencies**

The bill requires that the corporation develop agreements with DOEA, DCF, AHCA, DOH and any other state agency it considers necessary for the purpose of accessing state buildings and employees to provide training. The agencies will incur undetermined costs associated with this requirement.

#### Department of Elder Affairs

The Department of Elder Affairs reports that they no longer have the staffing or infrastructure capacity to meet the provisions of the legislation because their training program was privatized during the 2003 Legislative Session.

#### Agency for Health Care Administration

AHCA notes that the bill mandates agreements to be developed with itself, DOEA, DOH and DCF for the exclusive purpose of accessing state-owned buildings and state employees for the purpose of providing low-cost effective training. According to AHCA, without knowledge of the number of individuals who would actually need to be trained, at a minimum, the bill creates a need for one additional full-time equivalent position for the Agency to provide the proposed training. The position, located in Tallahassee, will travel to different locations around the state as needed to provide the

training. The comparable position identified for this training is a Health Services and Facilities Consultant (pay grade 24). It is estimated that there will be \$18,200 in travel expenses annually. The trainer would travel to seven districts quarterly with the following travel expenses: \$300 airfare, \$300 hotel expenses (3 days) and \$50 for incidentals. This would be a \$650 travel expense for each trip totaling \$18,200 annually. Deducting the allowance for travel of \$3,550 that is already included in the annual standard expenditure allowance for a position, an additional travel amount of \$14,650 per year would be needed. This would be a total cost to AHCA (salary and travel) in year 1 of \$81,319 and in year 2 of \$77,309.

AHCA notes it is not possible to determine how much training would be required, however there are over 2,300 licensed ALF and the staff turnover is high in some areas. In addition, there are 463 AFCH and relief personnel, and 163 ADCC staff, who would also need to be trained.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not affect counties or municipalities.

##### 2. Other:

Article IV, Section 6 of the state constitution, limits the power of the Legislature to create new departments, and specifically vests all functions of the executive branch of state government "among not more than twenty-five departments, exclusive of those specifically provided for or authorized" in the constitution. The creation of a corporation "administratively housed" within the Florida Policy and Exchange Center on Aging at the University of South Florida may raise this constitutional concern.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the bill appears directed at unlicensed caregivers employed by either licensed facilities or private entities, no definition of "caregiver" is provided. The Family Caregiver Alliance (FCA) defines a caregiver as one "who provides assistance to someone else who is, in some degree, incapacitated and needs help."<sup>18</sup> The FCA further distinguishes between "informal caregivers" (unpaid individuals such as family, friends, and neighbors) and "formal caregivers" (volunteers or paid care providers associated with a service system).<sup>19</sup> On December 6, 2005, the Senate Committee on Children & Families adopted without engrossing a definition of a "caregiver" as "a person who receives financial compensation for providing assistance, care, or personal services to another person." Moreover, there is no specific requirement that any member of the Board of Directors of the Florida Caregiver Institute, Inc., be a caregiver.

The legislation directs the board chairman to create an audit committee, constituted by at least three board members, to annually review the financial status of the corporation and ultimately report these findings to the Governor, President of the Senate, and Speaker of the House of Representatives. Nowhere, however, does the bill stipulate that certain members of the board will have accounting or audit experience, and the legislation makes no provision for the board's collaboration with certified

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<sup>18</sup> *Selected Caregiver Statistics*, accessed January 6, 2006, Family Caregiver Alliance, available at: [http://www.caregiver.org/caregiver/jsp/content\\_node.jsp?nodeid=439](http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=439).

<sup>19</sup> *Ibid.*

public accountants throughout such an audit process. CPAs are typically involved in audits to ensure accuracy and unbiased reporting.

The bill specifies that the Florida Caregiver Institute, Inc. is not a unit of state government. The bill also does not require that the corporation (and any committees it forms) be subject to the public records requirements of Chapter 119, F.S., or the public meetings requirements of Chapter 286, F.S.

In subsection 3(g) of section 1, the bill enables the corporation to charge a reasonable fee, on a sliding scale, for the training of unlicensed caregivers who work in the community or Parts III, V, or VII of Chapter 400, F.S., but provides no parameters for evaluation of what is considered a "reasonable fee".

AHCA has reported that the agency is uncertain how the corporation's mission will impact either the Consumer Directed Care or Assisted Living for the Elderly waiver programs.<sup>20</sup>

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>20</sup> The Florida Consumer Directed Care project, one of three such waiver programs nationally, is a cash benefit allowing recipients to make more of their own decisions about personal attendant and related personal assistance services. Similarly, the Assisted Living for the Elderly waiver provides additional personal care and supervision services to aged individuals who would otherwise require nursing home placement. Source: *Model Florida Long-Term Care System / Analyzing Long-Term Care Initiatives in Florida*, November 2003, Senate Committee on Health, Aging, and Long-Term Care, available at: [http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim\\_reports/pdf/2004-144hclong.pdf](http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-144hclong.pdf).

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 49**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Elder & Long Term Care  
Representative(s) Meadows offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Legislative intent; contract with corporation;  
purposes and duties, reports.--

(1) It is the intent of the Legislature to foster the  
development of caregiving for frail elders and disabled adults  
as a nonlicensed paraprofessional activity that is critical to  
the provision of community-based and institutional care for  
frail elders and disabled adults who live in the community or in  
an assisted living facility licensed under part III of chapter  
400, Florida Statutes, or an adult family-care home licensed  
under part VII of chapter 400, Florida Statutes, or who attend  
an adult day care center licensed under part V of chapter 400,  
Florida Statutes. It is the further intent of the Legislature to  
promote the use of nationally recognized best practices  
information by caregivers so as to improve the quality of care  
in the community and in long-term care facilities licensed by  
the state and to ensure some degree of uniformity of techniques,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

practices, and standards used in caring for frail elders and disabled adults residing in the state.

(2) In order to accomplish the goal of developing best practices information and providing that information to caregivers of frail elders or disabled adults who live in the community, reside in facilities licensed by the state under part III or part VII of chapter 400, Florida Statutes, or attend an adult day care center licensed under part V of chapter 400, Florida Statutes, the Department of Elder Affairs may contract with a not-for-profit corporation operated in compliance with chapter 617, Florida Statutes. The contracted corporation may be physically located in the Florida Policy Exchange Center on Aging at the University of South Florida.

(3) The contract with the corporation shall provide for the corporation to assist the Florida Policy Exchange Center on Aging in the development of policy recommendations to enhance the center's efforts to improve the skills and availability of individuals who seek to work as caregivers in the home, in the community, or in a facility licensed by the state under part III, part V, or part VII of chapter 400, Florida Statutes. The contract must provide that the corporation also:

(a) Shall seek to identify funding by state, federal, and private sources for the purpose of providing training in and promotion of the use of best practices to caregivers.

(b) Shall work with universities and other related parties to develop training materials and a curriculum and identify best practices.

(c) Shall conduct a needs assessment of the nonlicensed caregivers who work in the community or in facilities that are licensed under part III, part V, or part VII of chapter 400, Florida Statutes.



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54       (d) Shall make recommendations to the Department of  
55 Elderly Affairs, the Department of Children and Family Services,  
56 the Agency for Health Care Administration, and the Department of  
57 Health regarding policy and related changes that will improve  
58 the quality, availability, and retention of nonlicensed  
59 caregivers who work in the community or in facilities licensed  
60 under part III, part V, or part VII of chapter 400, Florida  
61 Statutes.

62       (e) Shall make recommendations on proposed legislative  
63 changes and budget-related items that would affect the quality,  
64 availability, and retention of nonlicensed caregivers and review  
65 the need for nonlicensed caregivers to work in the community or  
66 in facilities licensed under part III, part V, or part VII of  
67 chapter 400, Florida Statutes. This information shall be  
68 provided to the Governor, the President of the Senate, and the  
69 Speaker of the House of Representatives by January 1 of each  
70 year.

71       (f) Shall develop agreements with the Department of  
72 Elderly Affairs, the Department of Children and Family Services,  
73 the Agency for Health Care Administration, the Department of  
74 Health, and any other state agency it considers necessary for  
75 the exclusive purpose of providing access to state buildings and  
76 state employees in order to offer low-cost, effective training  
77 and paraprofessional development assistance to nonlicensed  
78 caregivers who work in the community or in facilities licensed  
79 under part III, part V, or part VII of chapter 400, Florida  
80 Statutes.

81       (g) May charge a reasonable fee, on a sliding scale, as  
82 provided in the bylaws of the corporation for the training of  
83 nonlicensed caregivers who work in the community or in  
84 facilities licensed under part III, part V, or part VII of

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85 chapter 400, Florida Statutes. The corporation shall take all  
86 steps possible to offer high-quality training at the most cost-  
87 effective rates.

88 (h) May offer training to the personnel of assisted living  
89 facilities, adult family-care homes, and adult day care centers.  
90 The Department of Elderly Affairs, in consultation with the  
91 corporation and the contractor responsible for the development  
92 of training materials, shall annually evaluate and make any  
93 necessary changes to these materials.

94 (i) Shall collect information regarding nonlicensed  
95 caregivers who work in the community and in facilities licensed  
96 under part III, part V, or part VII of chapter 400, Florida  
97 Statutes. The information collected must include, but need not  
98 be limited to, the salary rates for various positions,  
99 professional development needs of nonlicensed caregivers,  
100 information regarding turnover rates and retention, and data  
101 that identify the number of caregivers using best practices in  
102 daily care-related activities.

103 (j) Shall develop a memorandum of understanding with the  
104 Florida Policy Exchange Center on Aging that describes how the  
105 corporation will interact with the center in carrying out its  
106 responsibilities.

107 (k) Shall develop an agreement with the Florida Policy  
108 Exchange Center on Aging for the provision of administrative  
109 support and startup costs, with the expectation that the  
110 corporation will not rely upon the center for staff or financial  
111 assistance after June 1, 2008.

112 (l) May contract with the Florida Policy Exchange Center  
113 on Aging for the provision of staff support, research, technical  
114 assistance, and data storage under a memorandum of agreement.

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115       (m) Shall, by January 10 of each year, issue a report to  
116 the Governor, the President of the Senate, and the Speaker of  
117 the House of Representatives that evaluates the status of the  
118 work of the corporation relating to the use of best practices by  
119 caregivers and the development of nonlicensed caregivers who  
120 work in the community or in facilities licensed under part III,  
121 part V, or part VII of chapter 400, Florida Statutes.

122       (4) Each public sector agency that provides training or  
123 support for nonlicensed caregivers who work in the community or  
124 in facilities licensed under part III, part V, or part VII of  
125 chapter 400, Florida Statutes, shall cooperate with the  
126 corporation. The Florida Policy Exchange Center on Aging shall  
127 certify to the Governor, the President of the Senate, and the  
128 Speaker of the House of Representatives, using criteria that  
129 include communication, timeliness of response, and coordination  
130 of efforts, whether the corporation is receiving the necessary  
131 and requested support from public sector organizations that  
132 provide training to nonlicensed caregivers.

133       Section 2. By October 1, 2009, the Office of Program  
134 Policy Analysis and Government Accountability shall conduct a  
135 review of the contracted services for developing best practices  
136 information and providing it to caregivers, and shall issue a  
137 report to the Governor, the President of the Senate, and the  
138 Speaker of the House of Representatives evaluating the  
139 effectiveness of the corporation in helping the state meet its  
140 goals of improving the retention of nonlicensed caregivers in  
141 the community or in facilities licensed under part III, part V,  
142 or part VII of chapter 400, Florida Statutes, and whether it has  
143 been successful in promoting the use of best practices by  
144 caregivers of the state's frail elder and disabled adult  
145 population.

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Amendment No. 1 (for drafter's use only)

Section 3. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to caregivers for adults; providing legislative intent to foster caregiving as a nonlicensed paraprofessional activity and to promote the caregivers' use of best practices; providing for the Department of Elder Affairs to contract with a not-for-profit corporation; specifying requirements of the contract; requiring reports to the Governor and the Legislature; providing duties of the Florida Policy Exchange Center on Aging and other public agencies; providing for the Office of Program Policy Analysis and Government Accountability to conduct a review of the corporation by a specified date and to report to the Governor and the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

HB 49

2006

A bill to be entitled

An act relating to caregivers for adults; providing legislative intent to foster caregiving as a nonlicensed paraprofessional activity and to promote the caregivers' use of best practices; creating the Florida Caregiver Institute, Inc., an independent not-for-profit corporation housed in the Florida Policy Exchange Center on Aging at the University of South Florida; providing purposes, duties, and powers of the corporation; providing for a board of directors; providing for membership, terms of office, meetings, and powers and duties of and restrictions on the board; providing for an audit committee; requiring reports to the Governor and the Legislature; providing duties of the Florida Policy Exchange Center on Aging and other public agencies; providing for the Office of Program Policy Analysis and Government Accountability to conduct a review of the corporation by a specified date and to report to the Governor and the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Legislative intent; Florida Caregiver Institute, Inc.; creation, duties, board of directors, reports.--

(1) It is the intent of the Legislature to foster the development of caregiving for frail elders and disabled adults as a nonlicensed paraprofessional activity that is critical to

29 the provision of community-based and institutional care for  
30 frail elders and disabled adults who live in the community or in  
31 an assisted living facility licensed under part III of chapter  
32 400, Florida Statutes, or an adult family-care home licensed  
33 under part VII of chapter 400, Florida Statutes, or who attend  
34 an adult day care center licensed under part V of chapter 400,  
35 Florida Statutes. It is the further intent of the Legislature to  
36 promote the use of nationally recognized best practices  
37 information by caregivers so as to improve the quality of care  
38 in the community and in long-term care facilities licensed by  
39 the state and to ensure some degree of uniformity of techniques,  
40 practices, and standards used in caring for frail elders and  
41 disabled adults residing in the state.

42 (2) In order to accomplish the goal of developing best  
43 practices information and providing that information to  
44 caregivers of frail elders or disabled adults who live in the  
45 community, reside in facilities licensed by the state under part  
46 III or part VII of chapter 400, Florida Statutes, or attend an  
47 adult day care center licensed under part V of chapter 400,  
48 Florida Statutes, there is created the Florida Caregiver  
49 Institute, Inc., a not-for-profit corporation that shall be  
50 registered, incorporated, organized, and operated in compliance  
51 with chapter 617, Florida Statutes, and that may not be a unit  
52 of state government. The Florida Caregiver Institute, Inc.,  
53 hereinafter referred to as "the corporation," shall be  
54 administratively housed in the Florida Policy Exchange Center on  
55 Aging at the University of South Florida.

56 (3) The corporation shall assist the Florida Policy

57 Exchange Center on Aging in the development of policy  
58 recommendations to enhance the center's efforts to improve the  
59 skills and availability of individuals who seek to work as  
60 caregivers in the home, in the community, or in a facility  
61 licensed by the state under part III, part V, or part VII of  
62 chapter 400, Florida Statutes. The corporation also:

63 (a) Shall seek to identify funding by state, federal, and  
64 private sources for the purpose of providing training in and  
65 promotion of the use of best practices to caregivers.

66 (b) Shall work with universities and other related parties  
67 to develop training materials and a curriculum and identify best  
68 practices.

69 (c) Shall conduct a needs assessment of the nonlicensed  
70 caregivers who work in the community or in facilities that are  
71 licensed under part III, part V, or part VII of chapter 400,  
72 Florida Statutes.

73 (d) Shall make recommendations to the Department of  
74 Elderly Affairs, the Department of Children and Family Services,  
75 the Agency for Health Care Administration, and the Department of  
76 Health regarding policy and related changes that will improve  
77 the quality, availability, and retention of nonlicensed  
78 caregivers who work in the community or in facilities licensed  
79 under part III, part V, or part VII of chapter 400, Florida  
80 Statutes.

81 (e) Shall make recommendations on proposed legislative  
82 changes and budget-related items that would affect the quality,  
83 availability, and retention of nonlicensed caregivers and review  
84 the need for nonlicensed caregivers to work in the community or

in facilities licensed under part III, part V, or part VII of chapter 400, Florida Statutes. This information shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1 of each year.

(f) Shall develop agreements with the Department of Elderly Affairs, the Department of Children and Family Services, the Agency for Health Care Administration, the Department of Health, and any other state agency it considers necessary for the exclusive purpose of providing access to state buildings and state employees in order to offer low-cost, effective training and paraprofessional development assistance to nonlicensed caregivers who work in the community or in facilities licensed under part III, part V, or part VII of chapter 400, Florida Statutes.

(g) May charge a reasonable fee, on a sliding scale, as provided in the bylaws of the corporation for the training of nonlicensed caregivers who work in the community or in facilities licensed under part III, part V, or part VII of chapter 400, Florida Statutes. The corporation shall take all steps possible to offer high-quality training at the most cost-effective rates.

(h) May offer training to the personnel of assisted living facilities, adult family-care homes, and adult day care centers. The Department of Elderly Affairs, in consultation with the corporation and the contractor responsible for the development of training materials, shall annually evaluate and make any necessary changes to these materials.



113        (i) Shall collect information regarding nonlicensed  
114 caregivers who work in the community and in facilities licensed  
115 under part III, part V, or part VII of chapter 400, Florida  
116 Statutes. The information collected must include, but need not  
117 be limited to, the salary rates for various positions,  
118 professional development needs of nonlicensed caregivers,  
119 information regarding turnover rates and retention, and data  
120 that identify the number of caregivers using best practices in  
121 daily care-related activities.

122        (j) Shall develop a memorandum of understanding with the  
123 Florida Policy Exchange Center on Aging that describes how the  
124 corporation will interact with the center in carrying out its  
125 responsibilities.

126        (k) Shall develop an agreement with the Florida Policy  
127 Exchange Center on Aging for the provision of administrative  
128 support and startup costs, with the expectation that the  
129 corporation will not rely upon the center for staff or financial  
130 assistance after June 1, 2008.

131        (l) May contract with the Florida Policy Exchange Center  
132 on Aging for the provision of staff support, research, technical  
133 assistance, and data storage under a memorandum of agreement.

134        (4) (a) The board of directors of the corporation shall  
135 consist of 13 members who represent the views, interests, and  
136 perspectives of the parties, individuals, and stakeholders  
137 affected by the activities of the corporation. Each member of  
138 the board shall be appointed to a 2-year term and may not be  
139 reappointed to more than three additional terms, except that the  
140 initial legislative appointments shall be for a period of 3

141 years each.

142 (b) The board of directors of the corporation shall  
143 include:

144 1. One member appointed by the Florida Association of  
145 Homes for the Aging.

146 2. One member appointed by the Florida Assisted Living  
147 Affiliation.

148 3. One member appointed by the Alzheimer's Association.

149 4. One member appointed by the Florida Council on Aging.

150 5. One member appointed by the Florida Adult Day Care  
151 Association.

152 6. One member appointed by the Florida Respite Coalition.

153 7. One member appointed by the State Long-Term Care  
154 Ombudsman.

155 8. Two members appointed by the Governor.

156 9. Two members appointed by the President of the Senate.

157 10. Two members appointed by the Speaker of the House of  
158 Representatives.

159  
160 The Governor, the President of the Senate, and the Speaker of  
161 the House of Representatives must make their respective initial  
162 appointments not later than September 1, 2006.

163 (c) The chair shall be elected by the members, may not  
164 serve more than two 1-year terms, and may not be a state  
165 employee.

166 (d) The board shall adopt bylaws for the regulation of its  
167 affairs and the conduct of business and shall follow Robert's  
168 Rules of Order, newly revised edition, for all procedural

169 matters that arise.

170 (e) A majority of the members of the board constitutes a  
171 quorum.

172 (f) The corporation shall be accountable to the board. The  
173 meetings of the board shall be open to any member of the public  
174 and shall accept input from family members, consumers,  
175 stakeholders, providers, or other parties affected by the  
176 activities of the corporation. The board shall post the schedule  
177 and location of its meetings on a website and in public  
178 buildings.

179 (g) The chair shall ensure that accurate minutes are kept  
180 which reflect the attendance, motions, and actions of the board  
181 and the discussion of matters brought before the board. These  
182 minutes shall be made available to the public for inspection and  
183 review and, if possible, posted on a website to provide greater  
184 public access.

185 (h) The chair shall call a meeting quarterly and may  
186 schedule other meetings using electronic means as he or she  
187 considers appropriate. The chair shall call at least one meeting  
188 per year to establish goals and evaluate the progress of the  
189 corporation in the previous year.

190 (i) The chair may appoint advisory committees to advise  
191 the corporation on specific issues that fall within the  
192 corporation's scope of work and stated objectives.

193 (j) Each member of the board and its advisory committees  
194 shall serve at his or her own expense, including travel or other  
195 costs associated with his or her duties as a member of the board  
196 of directors.

(k) The chair may remove a member of the board for three unexcused absences from regularly scheduled meetings.

(l) An appointed member serves at the pleasure of the entity that made the appointment and may be removed by that entity without cause.

(5) (a) The chair shall establish an audit committee consisting of at least three board members to annually review and report on the financial condition of the corporation. A copy of the audit committee's report shall be provided to board members, the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 10 of each year. The audit committee's report must include a complete accounting of all revenues received and expenses incurred by the corporation during that year.

(b) The corporation may employ staff, contract with consultants, and otherwise retain the necessary staff within the limits of available funds to accomplish its goals and purposes.

(c) By January 10 of each year, the corporation shall issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that evaluates the status of the work of the corporation relating to the use of best practices by caregivers and the development of nonlicensed caregivers who work in the community or in facilities licensed under part III, part V, or part VII of chapter 400, Florida Statutes.

(d) Each public sector agency that provides training or support for nonlicensed caregivers who work in the community or in facilities licensed under part III, part V, or part VII of

chapter 400, Florida Statutes, shall cooperate with the corporation. The Florida Policy Exchange Center on Aging shall certify to the Governor, the President of the Senate, and the Speaker of the House of Representatives, using criteria that include communication, timeliness of response, and coordination of efforts, whether the corporation is receiving the necessary and requested support from public sector organizations that provide training to nonlicensed caregivers.

Section 2. By October 1, 2009, the Office of Program Policy Analysis and Government Accountability shall conduct a review of the Florida Caregiver Institute, Inc., and shall issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives evaluating the effectiveness of the corporation in helping the state meet its goals of improving the retention of nonlicensed caregivers in the community or in facilities licensed under part III, part V, or part VII of chapter 400, Florida Statutes, and whether it has been successful in promoting the use of best practices by caregivers of the state's frail elder and disabled adult population.

Section 3. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 243                      Hearing Aid Specialists  
**SPONSOR(S):** Kendrick and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 372

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	11 Y, 0 N	Bell	Mitchell
2) Elder & Long-Term Care Committee		Walsh <i>TW</i>	Walsh <i>TW</i>
3) Health & Families Council			
4) _____			
5) _____			

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### SUMMARY ANALYSIS

HB 243 excludes licensed hearing aid specialists from the requirement that a certain written statement of a patient's right to refuse or cancel payment, or be reimbursed for payment for other treatment or services, must accompany the advertisement of free, discounted, or reduced fee services.

The bill takes effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill removes a regulation that requires hearing aid specialists to make a certain disclosure in their advertisements when advertising services that are free or provided at a discounted or reduced fee.

#### B. EFFECT OF PROPOSED CHANGES:

##### BACKGROUND

In Florida, there are currently 831 licensed hearing aid specialists and 847 licensed audiologists.<sup>1</sup>

Hearing Aid Specialists. Hearing aid specialists are regulated under Part II of Chapter 484, F.S. Generally hearing aid specialists fit and sell hearing amplification systems to individuals in a retail establishment. Some of their duties include conducting hearing tests, interpreting auditory test results, and selecting, fitting, and modifying hearing amplification systems for individuals.

The Department of Health licenses<sup>2</sup> each applicant that the Board of Hearing Aid Specialists certifies:

- Is of good moral character;
- Is 18 years of age;
- Is a graduate of an accredited high school or its equivalent;
- Either:
  - Meets the requirements of the Board of Hearing Aid Specialist training program; or
  - Holds a valid, current license as a hearing aid specialist or its equivalent from another state and has been actively practicing in such capacity for at least 12 months; or
  - Is currently certified by the National Board for Certification in Hearing Instrument Sciences and has been actively practicing for at least 12 months.
- Has passed the licensure examination, which is the International Licensing Examination (ILE) for the Hearing Instrument Dispenser;
- Has demonstrated knowledge of state laws and rules relating to the fitting and dispensing of hearing aids.

Hearing aid specialists are required to complete continuing education requirements as a condition of license renewal.<sup>3</sup>

Audiologists. Audiologists are regulated under Part I of Chapter 468, F.S. The practice of audiology includes the assessment of hearing and balance. Audiologists do research on hearing loss, tinnitus, and balance system dysfunction. Audiologists also select, fit, and dispense amplification systems such as hearing aids; work to prevent hearing loss through providing and fitting protective devices; provide consultation on the effects of noise on hearing; and provide consumer education.

The Department of Health licenses<sup>4</sup> each audiologist applicant that the Board of Speech-Language Pathology and Audiology certifies:

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<sup>1</sup> Source: Florida Department of Health Medical Quality Assurance Licensee Data Center: Hearing Aid Specialist and Audiologist Data Downloads as of February 9, 2006. Figures cited are active licensees only.

<sup>2</sup> S. 484.045(2), F.S.

<sup>3</sup> S. 484.047(4), F.S.

<sup>4</sup> S. 468.1185(2), F.S.



- Holds a Master's degree or is enrolled in a Doctoral degree program from an accredited college or university with a major emphasis in the area of audiology, including completion of 60 semester hours, 30 of which must be at the graduate level;
- Has completed 300 clock hours in supervised clinical practice;
- Has completed nine months of full-time professional employment;
- Has passed the national examination;
- Has completed an education course on HIV/AIDS.<sup>5</sup>

Audiologists are required to complete continuing education requirements biennially as a condition of license renewal.<sup>6</sup>

Federal Regulations. Hearing aid devices are regulated by federal law.<sup>7</sup> Hearing aid specialists and audiologists are required to comply with federal regulations relating to conditions of sale, including:

- Medical evaluation requirements;
- Waiver of the medical evaluation requirements;
- Availability of hearing aid user instructional brochures; and
- Recordkeeping.

State Regulations. In addition to the federal regulations, state law contains specific requirements relating to the sale of hearing aids.

- **Thirty Day Trial Period:** Both hearing aid specialists and audiologists<sup>8</sup> are required to provide the buyer of a hearing aid with written notice of a 30-day trial period and money back guarantee. The guarantee must permit the purchaser to cancel the purchase for a valid reason.<sup>9</sup> If the hearing aid must be repaired, remade, or adjusted during the 30-day trial period, the running of the 30-day trial period is suspended one day for each 24-hour period that the hearing aid is not in the purchaser's possession. A repaired, remade, or adjusted hearing aid must be claimed by the purchaser within three working days after notification of availability. The running of the 30-day trial period resumes on the day the purchaser reclaims the repaired, remade, or adjusted hearing aid or on the fourth day after notification of availability.
- **Itemization of Prices:** Hearing aid specialists and audiologists<sup>10</sup> must provide an itemized listing of prices at the request of prospective hearing aid purchasers. This list must provide separate prices for each service component and each product.
- **Cancellation by Medical Authorization:** Hearing aid purchasers have the right<sup>11</sup> to their money back if a licensed physician, who is board-certified in otolaryngology or internal medicine or who is a licensed family practice physician, certifies in writing that the purchaser has a hearing impairment that contraindicates the use of a hearing aid or that will not be improved by the use of a hearing aid. The purchaser must give notice to the seller via certified mail within 60 days following the date of delivery of the hearing aid in order to effectuate the guarantee.

Economics of Health Care Regulation.<sup>12</sup> Economists argue that the regulation of health care usually involves striking a balance between patient safety and quality of care, and the cost and availability of services. Regulating quality is not without cost, and it is not without an effect on the market for health

<sup>5</sup> S. 468.1201, F.S.

<sup>6</sup> S. 468.1195, F.S.

<sup>7</sup> See 21 C.F.R. 801.420, 21 C.F.R. 801.421

<sup>8</sup> Ss. 484.0512 and 468.1246, F.S., respectively.

<sup>9</sup> A "valid reason" is defined as "failure by the purchaser to achieve satisfaction from use of the hearing aid(s), so long as the hearing aid(s) is returned to the seller within the 30-day trial period in good working condition." See Rules 64B6-6.001(2) and 64B30-8.008 (3), F.A.C.

<sup>10</sup> Pursuant to ss. 484.051 and 468.1245, F.S., respectively.

<sup>11</sup> S. 484.0513, F.S., as applies to hearing aid specialists and s. 468.1255, F.S., as applies to audiologists.

<sup>12</sup> This discussion is derived from a presentation to the House Committee on Health Care Regulation by Steve Ullman, Ph.D., University of Miami, on *Health Care Issues Associated with Regulation*, March 2005.

care services. Regulations that increase the cost of providing health care may lead to increased prices, a decrease in quantity, and hurt the bottom line of the supplier of services, thus, limiting access to health care. If regulations increase the costs of health care too much, consumers may drop out of the market. The decrease in demand may then cause a chain reaction so that health care suppliers drop out of the market, which would limit access to health care (the supply). Even a policy aimed at increasing demand for service, may be constrained by regulatory policies that limit the ability for suppliers to respond, so that the effect may be a large increase in price and a smaller increase in quantity of services provided.

### **Effect of Proposed Bill**

As noted, some laws relating to the sale of hearing aids apply equally to hearing aid specialists and to audiologists. However, the following disclosure, required of many professions<sup>13</sup> when advertising services that are free or provided at a discounted or reduced fee ---

THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT.

--- is required to be made by hearing aid specialists, but not by audiologists.

Hearing aid specialists and audiologists often work in close contact with one another, and clinics frequently employ both types of professionals. Although audiologists are licensed to perform many more services than hearing aid specialists, one of an audiologist's primary responsibilities is dispensing of hearing aids. As a practical matter, clinics that employ both hearing aid specialists and audiologists include the disclosure in their advertisements when advertising services that are free or provided at a discounted or reduced fee, even though pursuant to s. 456.062, F.S., such disclosure is not required of audiologists.

HB 243 amends s. 456.062, F.S., to exclude licensed hearing aid specialists from the requirement to publish the disclosure statement with all advertisements of free, discounted, or reduced fee services.

#### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 456.062, F.S., to exclude licensed hearing aid specialists from having to publish a disclosure statement with all advertisements of free, discounted, or reduced fee services.

**Section 2.** Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

<sup>13</sup> Currently 15 other licensed professions, including naturopaths, dentists, and nurses, are required to make the disclosure when advertising services that are free or provided at a reduced or discounted fee. See s. 456.062, F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate. HB 243 may lower advertising costs for hearing aid specialists and audiologists who employ hearing aid specialists. Hearing aid specialists and audiologists may choose to pass on their cost savings to customers.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

No additional rulemaking authority is required to implement the provisions of this bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Board of Hearing Aid Specialists has stated that audiologists, who also sell hearing aids, are not subject to this same advertising disclosure requirement in s. 456.062, F.S. Placing hearing aid specialists in this category with other health professionals, when they also must offer trial periods, refunds and money back guarantees, may be duplicative or unnecessary.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

HB 243

2006

A bill to be entitled  
An act relating to hearing aid specialists; amending s.  
456.062, F.S.; eliminating the application of certain  
advertising requirements to health care practitioners  
licensed under pt. II of ch. 484, F.S., relating to the  
regulation of hearing aid specialists; providing an  
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 456.062, Florida Statutes, is amended  
to read:

456.062 Advertisement by a health care practitioner of  
free or discounted services; required statement.--In any  
advertisement for a free, discounted fee, or reduced fee  
service, examination, or treatment by a health care practitioner  
licensed under chapter 458, chapter 459, chapter 460, chapter  
461, chapter 462, chapter 463, chapter 464, chapter 465, chapter  
466, chapter 467, chapter 478, chapter 483, part I of chapter  
484, chapter 486, chapter 490, or chapter 491, the following  
statement shall appear in capital letters clearly  
distinguishable from the rest of the text: THE PATIENT AND ANY  
OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO  
PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER  
SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT  
OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR  
THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION,  
OR TREATMENT. However, the required statement shall not be

HB 243

2006

29 | necessary as an accompaniment to an advertisement of a licensed  
30 | health care practitioner defined by this section if the  
31 | advertisement appears in a classified directory the primary  
32 | purpose of which is to provide products and services at free,  
33 | reduced, or discounted prices to consumers and in which the  
34 | statement prominently appears in at least one place.

35 |       Section 2.   This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 947

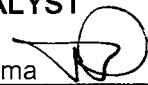

Long-Term Care Coverage

**SPONSOR(S):** Legg

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1924

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Elder &amp; Long-Term Care Committee</u>	_____	DePalma 	Walsh 
2) <u>Insurance Committee</u>	_____	_____	_____
3) <u>Health Care Appropriations Committee</u>	_____	_____	_____
4) <u>Health &amp; Families Council</u>	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

House Bill 947 directs the Agency for Health Care Administration to amend the Medicaid state plan to establish the Florida Long-Term Care Partnership Program, in compliance with the requirements of the Social Security Act as amended by the federal Deficit Reduction Act of 2005.

The bill also provides that, for purposes of determining Medicaid eligibility, assets or resources in an amount equal to the insurance benefit payments made to, or on behalf of, an individual who is a beneficiary under an approved Florida Long-Term Care Partnership Program policy shall be disregarded. Essentially, this enables Floridians to qualify for coverage of the substantial costs associated with provision of long-term care services under Medicaid without first being required to substantially exhaust --- or "spend down" --- assets and resources.

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – Floridians' participation in a long-term care insurance partnership program could reduce Medicaid spending on long-term nursing facility services presently provided to Medicaid-eligible individuals without long-term care insurance coverage.

**Safeguard Individual Liberty** – The bill restructures the method used for Medicaid asset determinations by providing a mechanism for individuals to qualify for coverage of the costs of long-term care needs under Medicaid without first being required to substantially exhaust or "spend down" personal resources and assets.

**Promote Personal Responsibility** – The structure of the Florida Long-Term Care Partnership Program could provide incentives for individuals in the state to purchase long-term care insurance coverage.

**Empower Families** – Individuals ineligible for the long-term care services provided by Medicaid --- but also with income levels making private long-term care coverage unaffordable --- would be able to purchase long-term care from participating providers under the partnership program.

#### B. EFFECT OF PROPOSED CHANGES:

### BACKGROUND

#### Long-Term Care

"Long-term care" refers to a broad range of assistive medical, personal and social services needed by individuals who are unable to meet their basic living needs for an extended period of time, often as result of accident, illness or frailty. Frequently, such individuals demonstrate an inability to move about, dress, bathe, eat, use a toilet or follow medication schedules. Consequently, assistance is often necessary to help with daily household cleaning, meal preparation, shopping, bill paying, medical visits, and administration of medication. Additional long-term care disabilities may be attributable to cognitive impairment associated with stroke, depression, dementia, Alzheimer's disease, Parkinson's disease and other medical conditions affecting the brain.

In testimony provided before the United States Senate Special Committee on Aging in March, 2002, the Comptroller General of the U.S. indicated that long-term care expenditures for persons of all ages totaled \$137 billion in 2000, and announced that spending on long-term care services for the nation's elderly population is projected to nearly quadruple to \$379 billion by 2050.<sup>1</sup> In 2005, roughly nine million individuals 65 and older required long-term care services, and by 2020 it is projected that 12 million older Americans will need some form of long-term care assistance.<sup>2</sup> A study by the U.S. Department of Health and Human Services says that people who reach age 65 will likely have a 40 percent chance of entering a nursing home, and about 10 percent of those entering a nursing home facility will stay there five or more years.<sup>3</sup>

<sup>1</sup> *Aging Baby Boom Generation Will Increase Demand and Burden on Federal and State Budgets*, GAO-02-544T, March 21, 2002, statement of Comptroller General of the United States before the U.S. Senate Special Committee on Aging, available at: <http://www.gao.gov/new.items/d02544t.pdf>.

<sup>2</sup> *Long-Term Care*, accessed February 17, 2006, the Official U.S. Government Site for People with Medicare, available at: <http://www.medicare.gov/LongTermCare/Static/Home.asp>.

<sup>3</sup> United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, March 2005.

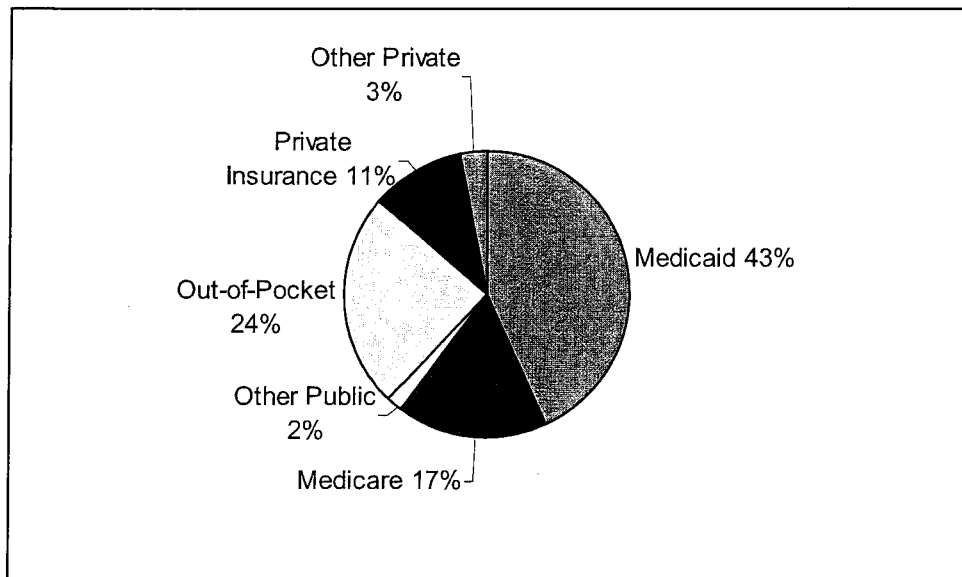


## Long-Term Care Financing

The costs associated with long-term care services are substantial. The average cost of a nursing home stay is more than \$55,000 per year, and as much as \$100,000 in some urban areas. Hourly home care agency rates average \$37 for a licensed practical nurse, and \$18 for a home health aide.<sup>4</sup>

Medicaid is now the primary payer of long-term care services in the United States (see figure 1),<sup>5</sup> and, as a result, state and federal governments bear a tremendous financial burden for provision of these services. The state of Florida is particularly affected, as it has the highest proportion of individuals age 65 to 84 of any state in the nation, and this elderly population is expected to grow 130 percent by 2025.<sup>6</sup> In FY 2002-03, Florida Medicaid spent \$3.2 billion (or 28 percent of its total Medicaid budget) on four core long-term care services: nursing homes, Intermediate Care Facilities for Persons with Developmental Disabilities, Home and Community-Based Services waivers, and assistive care services.<sup>7</sup> Florida Medicaid currently pays for nearly two-thirds of all nursing home days for the state's frail elders.

**Figure 1. Sources of Long-Term Care Payments, 2003**



**Source:** *Medicaid and Long-Term Services and Supports for Older People*, AARP Public Policy Institute 2005

Seniors often believe that Medicare, the nearly universal source of acute health care coverage for individuals 65 and older, pays for a vast array of long-term care services.<sup>8</sup> However, many common long-term care needs (e.g., bathing, dressing, and other household chores) do not require skilled help and, therefore, are not generally covered by Medicare.<sup>9</sup> Consequently, many seniors are left

<sup>4</sup> *Long-Term Care Insurance*, September 2004, AARP Public Policy Institute, available at: [http://assets.aarp.org/rgcenter/health/fs7r\\_ltc.pdf](http://assets.aarp.org/rgcenter/health/fs7r_ltc.pdf).

<sup>5</sup> *Medicaid and Long-Term Services and Supports for Older People*, February 2005, AARP Public Policy Institute, available at: [http://assets.aarp.org/rgcenter/post-import/fs18r\\_medicaid\\_05.pdf](http://assets.aarp.org/rgcenter/post-import/fs18r_medicaid_05.pdf).

<sup>6</sup> *Model Long-Term Care System: Analyzing Long-Term Care Initiatives in Florida*, November 2003, Florida Senate Interim Project 2004-144, available at: [http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim\\_reports/pdf/2004-144hc.pdf](http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-144hc.pdf).

<sup>7</sup> *Medicaid Long-Term Care: Overview and Update*, December 15, 2004, Agency for Health Care Administration presentation to the Senate Health and Human Services Appropriations Committee, available at: [http://ahca.myflorida.com/Medicaid/deputy\\_secretary/recent\\_presentations/ltc\\_overview\\_and\\_update\\_121504.pdf](http://ahca.myflorida.com/Medicaid/deputy_secretary/recent_presentations/ltc_overview_and_update_121504.pdf).

<sup>8</sup> *Medicaid and Long-Term Services and Supports for Older People*, AARP Public Policy Institute, *supra*.

<sup>9</sup> *Long-Term Care Insurance*, AARP Public Policy Institute, *supra*.

attempting to “spend down” their assets in an effort to satisfy Medicaid asset and income criteria, thereby gaining eligibility for Medicaid services.

As an alternative to Medicaid impoverishment or complete self-financing, a market for private long-term care insurance has developed, and grown, in recent years. However, the premiums typically associated with high-quality private insurance coverage exceed the resources of many Americans.<sup>10</sup> In 2001, the average annual premium of long-term care insurance, if bought at age 65, exceeded \$2,300<sup>11</sup> and most estimates indicate that only 10% to 20% of seniors can presently afford private long-term care insurance.<sup>12</sup>

In response, states have adopted several strategies to encourage younger individuals to purchase private long-term care insurance. States frequently offer tax incentives to individuals or employers to purchase private long-term care coverage; however, tax deductions tend to be small, and often don’t constitute a significant savings for either employers or individual purchasers. Alternatively, many states have begun offering long-term care insurance to state employees and retirees as part of state benefits packages. Finally, several states have explored the possibility of public/private insurance partnerships between state government and private insurance companies. Under this approach, individuals with moderate income are encouraged to purchase private long-term care insurance to fund their long-term care needs rather than divesting their assets and relying on Medicaid assistance --- effectively reducing or delaying the need for Medicaid assistance.

### **Long-Term Care Partnership Program**

The Long-Term Care Partnership Program began in 1987 as a demonstration project funded through the Robert Wood Johnson Foundation (RWJF).<sup>13</sup> As part of the demonstration project, four out of the original eight states with RWJF planning grants --- California, Connecticut, Indiana and New York --- ultimately implemented partnership programs.

With the help of the National Program Office, located at the University of Maryland Center on Aging, states participating in the planning phase of the partnership programs developed strategies to encourage the purchase of private long-term care insurance policies. The states recognized that, in addition to decreasing the costs of these policies, it was equally important to increase the quality of coverage being offered in order to broaden the market for long-term care insurance.

Ultimately, a unique approach emerged, whereby individuals purchasing a state-certified long-term care insurance “partnership” policy first rely on benefits from their private long-term care insurance policy to cover long-term care costs. Thereafter, if insurance benefits are exhausted, such policyholders are allowed to protect some or all of their assets from Medicaid “spend-down” requirements during the eligibility determination process (though certain other income requirements must still be satisfied).<sup>14</sup> Essentially, the logic supporting long-term care partnership programs is a general desire to encourage the purchase of a limited, and therefore more affordable, amount of long-term care coverage, together with an assurance that purchasers could potentially receive additional long-term care services, if needed, through the Medicaid program after their insurance coverage has been exhausted.<sup>15</sup>

<sup>10</sup> *Private Long-Term Care Insurance: the Medicaid Interaction*, May 2004, AARP Public Policy Institute, available at: [http://assets.aarp.org/rqcenter/health/ib68\\_ltc.pdf](http://assets.aarp.org/rqcenter/health/ib68_ltc.pdf).

<sup>11</sup> *Long-Term Care Insurance in 2002*, June 2004, America’s Health Insurance Plans, available at: <http://www.ahip.org/content/default.aspx?bc=39|341|328|454>. This premium is for a policy purchased at age 65, and providing a \$150 daily benefit, 5 percent compound inflation protection, four years of coverage and a 90-day elimination period.

<sup>12</sup> *State Cost Containment Initiatives for Long-Term Care Services for Older People*, May 2000, Congressional Research Service, available at: <http://www.law.umaryland.edu/marshall/crsreports/crsdocuments/RL30752.pdf>.

<sup>13</sup> For more information on the Robert Wood Johnson Foundation, visit <http://www.rwjf.org>.

<sup>14</sup> *Overview of the Long-Term Care Partnership Program* (GAO-05-1021R), September 9, 2005, U.S. Government Accountability Office, available at: <http://www.gao.gov/new.items/d051021r.pdf>.

<sup>15</sup> *The Long-Term Care Partnership Program: Issues and Options*, December 2004, The Brookings Institution Retirement Security Project, available at: <https://www.brookings.edu/dybdocroot/views/papers/200412retirement.pdf>.

What follows is a description of the structural features of each state's program.

#### New York's "Total Assets" Model

New York's program requires the purchase of a comprehensive long-term care insurance policy, covering a minimum of three years of nursing home care and six years of home and community-based care or a combination of the two, but offers total asset protection for all of the purchaser's assets at the time of Medicaid eligibility determination. While this model requires a greater initial premium commitment from enrollees than other models (discussed below), New York's approach provides 100% protection of assets if participants exhaust their policies and require Medicaid services. The underlying premise of such a "total assets model" was that the period of insurance coverage should be equal to, or exceed, the time during which a person would be penalized by having to pay for long-term care if forced to transfer assets to become Medicaid eligible (when the program in New York began, this period was 30 months).

#### California and Connecticut's "Dollar-for-Dollar" Models

The programs in California and Connecticut have dollar-for-dollar models in which the dollar amount of protected assets is equivalent to the dollar value of the benefits paid by the long-term care insurance policy. For example, an individual purchasing a long-term care insurance policy with \$300,000 total coverage would have \$300,000 of assets protected if benefits were exhausted and such person eventually applied for Medicaid assistance.

#### Indiana's "Hybrid" Model

Although originally adopting a dollar-for-dollar approach structurally similar to the partnership programs in California and Connecticut, in 1998 the state adopted a hybrid model allowing purchasers to obtain dollar-for-dollar protection up to a certain state-defined benefit level; all policies with benefits above that threshold amount provide total asset protection for the policyholder.

A few common features of the partnership policies implemented by these four participant states include incorporation of an inflation protection rider and a non-forfeiture clause. Because states have been targeting citizens in their 50s and 60s, inflation protection (which is typically waived for policyholders purchasing long-term care insurance after a certain age) is essential to maintaining the value of the policy until the policyholder needs the insurance, which could potentially be decades later.<sup>16</sup> Similarly, non-forfeiture clauses are often a necessary mechanism for protecting the investments of policyholders in the event they can no longer afford premiums. Because individuals pay their insurance premiums for years in advance of needing long-term care services, both California and New York concluded it was important that policyholders have the ability to maintain some portion of their policy benefits if they cannot continue to pay premiums.<sup>17</sup>

### **Success of Long-Term Care Partnership Programs**

The four states utilizing partnership programs vary in how their respective programs protect policyholders' assets, and analysis of such programs' success is complicated because the information collected by the states is not standardized. However, based on the most recently-available data compiled by the Government Accountability Office, there are 172,477 active partnership policies insured by a total of seventeen participating insurance companies throughout these four states.<sup>18</sup> The percentage of partnership policyholders who were first-time policyholders of long-term care coverage was 94% in California, 92% in Connecticut, 94% in Indiana and 95% in New York.<sup>19</sup>

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Overview of the Long-Term Care Partnership Program* (GAO-05-1021R), U.S. Government Accountability Office, *supra*.

<sup>19</sup> *Ibid.*

The total number of partnership policies purchased each year has increased significantly since the programs' implementation. In recent years, however, a decline in the number of policies purchased has been observed. State partnership officials report that such a decline – or leveling off – is likely reflective of overall trends in the long-term care insurance market, and not specific to the partnership policies.<sup>20</sup>

Data from the partnership states do indicate that the program attracts upper middle-class individuals to purchase coverage. In the three states surveying a sample of partnership policyholders – California, Connecticut and Indiana – the majority of policyholders reported that their total assets were greater than \$350,000.<sup>21</sup>

Perhaps most importantly, less than 1% of active partnership policyholders (1,209 total) are currently accessing their long-term care insurance benefits. Since the programs began, a total of 251 policyholders in the four states have exhausted their long-term care insurance benefits, and just 119 (47%) have accessed Medicaid funds.

Still, upon implementation of the partnership programs, several criticisms were initially leveled by both stakeholders and industry analysts alike.<sup>22</sup> Many were troubled that a public assistance program such as Medicaid would endorse private insurance products, which they believed to be beyond the scope and mission of the Medicaid program. Likewise, others were concerned that partnership arrangements would actually increase Medicaid spending, rather than reduce it, if wealthy individuals who would have purchased similar insurance policies anyway participate in the partnership, keep their assets, and are allowed access to Medicaid funds traditionally earmarked for lower-income Americans. Because the partnership policies have thus far been more attractive to higher-income individuals, there is an additional concern that such policies might not be insuring those individuals most likely to otherwise spend down their assets and resources to become Medicaid-eligible.

The Government Accountability Office reports that it is difficult to determine whether and to what extent the Long-Term Care Partnership Program has resulted in cost savings to the Medicaid program, because there is insufficient data to determine if policy purchasers would have accessed Medicaid had they not purchased long-term insurance coverage.

Buoyed by concerns of the morality and wisdom of possibly directing Medicaid funds at upper- and middle-class citizens, the criticisms detailed above initially gave rise to federal opposition to long-term care partnership policies, ultimately resulting in the Omnibus Budget Reconciliation Act of 1993 (OBRA). OBRA amended section 1917 of the Social Security Act – effectively placing restrictions on further attempts to replicate the insurance partnership model – by requiring that any states implementing partnership programs after May 14, 1993 must recover assets from the estates of all persons receiving services under Medicaid upon death.<sup>23</sup> The result of this provision was that, for states wishing to replicate the various asset protection models, the asset protection component of the policies remains in effect, but only while the policyholder is alive.

Nevertheless, interest in the partnership program had grown well beyond the four states initially experimenting with a partnership model to long-term care coverage. At least 16 states (including Florida) have passed legislation to implement a partnership program once restrictions imposed by OBRA were withdrawn or waived.

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<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.* In a policyholder survey, California and Connecticut instructed policyholders to exclude the value of homes and cars when reporting assets, while Indiana instructed policyholders to include the value of their homes.

<sup>22</sup> *The Long-Term Care Partnership Program: Issues and Options*, The Brookings Institution Retirement Security Project, *supra*.

<sup>23</sup> Beneficiaries participating in established or approved partnership programs as of May 14, 1993 were exempted from this requirement.

Chapter 2005-252, L.O.F., enacting CS/SB 1208, amends s. 409.905, F.S., by providing that, for purposes of eligibility determinations for nursing facility services funded by Medicaid, individuals who are beneficiaries of approved long-term care partnership program insurance policies with exhausted policy benefits shall have their total countable assets reduced by \$1 for each \$1 of benefits paid out under such policy.

The legislation further created s. 409.9102, F.S., directing the Agency for Health Care Administration (AHCA) to establish the Florida Long-term Care Partnership Program ("the Program"), which shall:

- provide incentives for an individual to obtain insurance to cover the costs of long-term care;
- establish standards for long-term care insurance policies for designation as approved long-term care partnership program policies in consultation with the Office of Insurance Regulation (OIR);
- provide a mechanism to qualify for coverage of the costs of long-term care needs under Medicaid without first being required to substantially exhaust his or her resources, including a reduction of the individual's asset valuation by \$1 for each \$1 of benefits paid out under the individual's approved long-term care partnership program policy as a determination of Medicaid eligibility;
- provide and approve long-term care partnership plan information distributed to individuals through insurance companies offering approved partnership policies; and
- alleviate the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives.

Additionally, AHCA was directed to develop a plan for the Program's implementation, and to present the plan in the form of recommended legislation to the President of the Senate and the Speaker of the House of Representatives prior to the commencement of the 2006 legislative session.

Both the amendments to s. 409.905, F.S., and the creation of s. 409.9102, F.S., were to take effect contingent upon amendment of s. 1917(b)(1)(c) of the Social Security Act by the United States Congress to delete the "May 14, 1993" deadline for approval by states of long-term care partnership plans.

### **The Federal Deficit Reduction Act of 2005**

On February 8, 2006, President Bush signed the federal Deficit Reduction Act of 2005 ("the Deficit Reduction Act") into law. Among numerous other changes made to Medicaid and Medicare, the Deficit Reduction Act amends s. 1917(b)(1)(C)(ii) of the Social Security Act to allow groups of individuals in states with plan amendments approved after May 14, 1993 to be exempt from estate recovery requirements if the amendment provides for a qualified state long-term care insurance partnership program. For purposes of the Social Security Act, the term "qualified state long-term care insurance partnership" means a Medicaid state plan amendment providing for the disregard of any assets or resources in the amount equal to the amount of insurance benefit made to or on behalf of an individual who is a beneficiary under an approved long-term care policy (including a certificate issued under a group insurance contract), if the following requirements are met:

- (I) the policy covers an insured who was a resident of such state when coverage first became effective under the policy. In the case of a long-term care insurance policy exchanged for another such policy, this requirement would apply based on the coverage of the first such policy that was exchanged;
- (II) the policy is a qualified long-term care insurance policy (as defined in s. 7702B(b) of the Internal Revenue Code of 1986) issued not earlier than the effective date of the state plan amendment;
- (III) the policy meets the requirements of the long-term care insurance model regulation and the long-term care insurance model Act, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000);
- (IV) if the policy is sold to an individual who:

- has not attained age 61 as of the date of purchase, the policy provides compound annual inflation protection;
  - has attained age 61 but has not attained age 76 as of the date of purchase, the policy provides some level of inflation protection; and
  - has attained age 76 as of the date of purchase, the policy may (but is not required to) provide some level of inflation protection;
- (V) the State Medicaid agency under s. 1902(a)(5) of the Social Security Act provides information and technical assistance to the State insurance department on the insurance department's role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care;
- (VI) the issuer of the policy provides regular reports including notification regarding when benefits provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information appropriate to the administration of such partnerships; and
- (VII) the state does not impose any requirement affecting the terms or benefits of such a policy unless the state imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with such a partnership.

The Deficit Reduction Act also requires the Secretary of Health and Human Services to develop, no later than January 1, 2007, standards for the uniform reciprocal recognition of long-term care insurance policies among states with qualified state long-term care insurance partnerships, so that benefits paid under such policies will be treated the same by all such states.

The Deficit Reduction Act establishes a National Clearinghouse for Long-Term Care Information. Such Clearinghouse is responsible for:

- educating consumers with respect to the availability and limitations of coverage for long-term care under the Medicaid program, and providing contact information for obtaining state-specific information on long-term care coverage, including eligibility and estate recovery requirements under State Medicaid programs;
- providing objective information to assist consumers with the decision-making process for determining whether to purchase long-term care insurance or to pursue other private market alternatives for purchasing long-term care, and providing contact information for additional objective resources on planning for long-term care needs; and
- maintaining a list of states with state long-term care insurance partnerships under the Medicaid program that provide reciprocal recognition of long-term care insurance policies issued under such partnerships.

### **Effect of Proposed Changes**

HB 947 amends s. 409.905(8), F.S., by revising Medicaid eligibility criteria for nursing and rehabilitative services, and providing that an individual who is a beneficiary of a Florida long-term care partnership program insurance policy and who has exhausted the policy's benefits shall have their countable assets reduced by an amount equal to the insurance benefit payments that are made to, or on behalf of, such individual. Additionally, the bill repeals s. 409.905(8), F.S., as amended by Chapter 2005-252, L.O.F.

The bill reenacts and amends s. 409.9102, F.S., as created by Chapter 2005-252, L.O.F., and directs AHCA to amend the Medicaid state plan establishing the Florida Long-Term Care Partnership Program in compliance with the requirements of the Social Security Act. In addition to incentivizing purchase of long-term care insurance and establishing standards for designation of such policies as approved long-term care partnership program insurance policies in consultation with the Office of Insurance Regulation, the bill also directs that the Program include a provision for the disregard of assets or resources in an amount equal to the insurance benefit payments that are made to, or on behalf of, an individual who is a beneficiary under an approved Florida long-term care partnership program

insurance policy as a determination of Medicaid eligibility. The bill provides for consultation with the Department of Children and Family Services during such Medicaid eligibility determinations.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 409.905(8), F.S.; revises Medicaid eligibility criteria for nursing and rehabilitative services; provides for reduction of an individual's total countable assets by an amount equal to the insurance benefit payments made under a Florida long-term care partnership program insurance policy, if such policy benefits have been exhausted.

**Section 2.** Repeals s. 409.905(8), F.S., as amended by Chapter 2005-252, L.O.F., to remove the contingent effective date.

**Section 3.** Reenacts and subsequently amends s. 409.9102, F.S., as created by Chapter 2005-252, L.O.F.; directs the Agency for Health Care Administration to amend the Medicaid state plan establishing the Florida Long-Term Care Partnership Program, in compliance with the Social Security Act; provides for the disregard of assets or resources in an amount equal to the insurance benefit payments made to, or on behalf of, an individual who is a beneficiary under an approved long-term care partnership program policy; provides for consultation with the Department of Children and Families during determination of Medicaid eligibility.

**Section 4.** Amends s. 4 of Chapter 2005-252, L.O.F., by providing the act is effective upon becoming a law.

**Section 5.** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Potentially, the Agency for Health Care Administration could experience a fiscal effect if additional staff or contract funds are required to provide counseling to individuals planning for long-term care needs. However, if the legislation is successful in avoiding (or delaying) future Medicaid expenditures, the bill could result in savings or cost-avoidance to the state.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Because counties participate in the cost of nursing facility care for the Medicaid program, shifting a portion of the cost away from the Medicaid program could result in savings or cost-avoidance to individual counties.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

It is expected that an increased amount of approved long-term care insurance policies will be purchased as a result of this legislation. This renewed interest in long-term care coverage could potentially invigorate the state's insurance industry. However, depending on the criteria ultimately adopted for determination of which policies constitute "approved" Florida Long-Term Care Partnership policies, some insurers offering other long-term care coverage could experience reduced profitability.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The municipal/county mandates provision in section 18 of article VII of the Florida Constitution does not appear to be applicable, since the bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The citation to s. 1921(b) of the Social Security Act is incorrect; it should read "s. 1917(b)."

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 947

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Elder & Long-Term Care  
Committee

Representative(s) Legg offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Section 409.9102, Florida Statutes, as created  
by chapter 2005-252, Laws of Florida, is reenacted and amended  
to read:

(Substantial rewording of section. See s.

409.9102, F.S., for present text.)

409.9102 Florida Long-Term Care Partnership Program.--The  
Agency for Health Care Administration, in consultation with the  
Office of Insurance Regulation and the Department of Children  
and Family Services, is directed to establish the Florida Long-  
Term Care Partnership Program, in compliance with the  
requirements of s. 1917(b) of the Social Security Act, as  
amended.

(1) The program shall:

(a) Provide incentives for an individual to obtain or  
maintain insurance to cover the cost of long-term care.

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22        (b) Provide a mechanism to qualify for coverage of the  
23 costs of long-term care needs under Medicaid without first being  
24 required to substantially exhaust his or her assets, including a  
25 provision for the disregard of any assets in an amount equal to  
26 the insurance benefit payments that are made to or on behalf of  
27 an individual who is a beneficiary under a Florida long-term  
28 care partnership program.

29        (c) Alleviate the financial burden on the state's medical  
30 assistance program by encouraging the pursuit of private  
31 initiatives.

32        (2) The Agency for Health Care Administration, in  
33 consultation with the Office of Insurance Regulation and the  
34 Department of Children and Family Services, shall create  
35 standards for long-term care partnership plan information  
36 distributed to individuals through insurance companies offering  
37 approved partnership policies.

38        (3) The Agency for Health Care Administration is  
39 authorized to amend the Medicaid state plan and adopt rules  
40 pursuant to ss. 120.536(1) and 120.54 to implement this section.

41        (4) The Department of Children and Family Services, when  
42 determining eligibility for Medicaid long-term care services for  
43 an individual who is the beneficiary of an approved long-term  
44 care partnership policy, shall reduce the total countable assets  
45 of the individual by an amount equal to the insurance benefit  
46 payments that are made to or on behalf of the individual. The  
47 department is authorized to adopt rules pursuant to ss.  
48 120.536(1) and 120.54 to implement this subsection.

49        Section 2. Section 627.94075, Florida Statutes, is created  
50 to read:

51        627.94075 Florida Long-Term Care Partnership Program.--

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52        (1) The office, in consultation with the Agency for Health  
53 Care Administration and the Department of Children and Family  
54 Services, is directed to develop standards for the designation  
55 of eligible long-term care policies to be issued in accordance  
56 with the Florida Long-Term Care Partnership Program as described  
57 in s. 409.9102 and a form or forms that shall be used by  
58 insurers to assist insureds and the program in making a  
59 determination of eligible policies. Insurers, upon request of  
60 the office, shall provide information necessary to determine the  
61 number of eligible policies, the amount of benefits paid, and  
62 the types and kinds of products offered in order to monitor the  
63 implementation of the program.

64        (2) The commission may adopt all rules pursuant to ss.  
65 120.536(1) and 120.54 necessary to implement applicable  
66 provisions of the Long-Term Care Partnership Program; establish  
67 standards for the determination of whether a policy is eligible  
68 for the program; establish the proper reporting of benefits paid  
69 under partnership eligible insurance policies; adopt  
70 standardized forms to be used by insurers to provide information  
71 to insureds and the program regarding the eligibility of the  
72 insurer's long-term care policy as a qualifying or nonqualifying  
73 policy with the program; and adopt forms to be filed by insurers  
74 to report information requested by the office in connection with  
75 the program.

76        Section 3. Sections 1 and 2 of chapter 2005-252, Laws of  
77 Florida, are repealed.

78        Section 4. Section 4 of chapter 2005-252, Laws of Florida,  
79 is amended to read:

80        Section 4. This act shall take effect upon becoming a law,  
81 ~~except that the amendments to section 409.905, Florida Statutes,~~  
82 ~~and the newly created section 409.9102, Florida Statutes,~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

~~provided in this act shall take effect contingent upon amendment  
to section 1917(b)(1)(c) of the Social Security Act by the  
United States Congress to delete the "May 14, 1993," deadline  
for approval by states of long-term care partnership plans.~~

Section 5. This act shall take effect upon becoming law.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to long-term care coverage; reenacting and  
amending s. 409.9102, F.S.; directing the Agency for  
Health Care Administration to amend the Medicaid state  
plan that established the Florida Long-Term Care  
Partnership Program for purposes of compliance with  
provisions of the Social Security Act; providing duties of  
the program; requiring consultation with the Office of  
Insurance Regulation and the Department of Children and  
Family Services for the creation of standards for certain  
information; providing rulemaking authority to Agency for  
Health Care Administration for implementation of s.  
409.9102, F.S.; providing rulemaking authority to the  
Department of Children and Family Services regarding  
determination of eligibility for certain services;  
creating s.627.94075, F.S.; requiring Office of Insurance  
Regulation in consultation with Agency for Health Care  
Administration and Department of Children and Family  
Services to develop standards for designation of eligible  
long-term care policies; providing rulemaking authority to  
Commission of Insurance Regulation for the implementation  
of the Long-Term Care Partnership Program; repealing ss. 1  
and 2 of chapter 2005-252, Laws of Florida, to delete a  
conflicting provision relating to eligibility for nursing

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114 and rehabilitative services and the establishment of a  
115 Long-Term Care Partnership Program that were contingent  
116 upon amendment to the Social Security Act; amending s. 4,  
117 ch. 2005-252, Laws of Florida, to delete a contingency in  
118 an effective date; providing an effective date.  
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A bill to be entitled

An act relating to long-term care coverage; amending s. 409.905, F.S.; revising conditions for eligibility for nursing and rehabilitative services; repealing s. 409.905(8), F.S., as amended, to delete a conflicting provision relating to eligibility for nursing and rehabilitative services that was contingent upon amendment to the Social Security Act; reenacting and amending s. 409.9102, F.S.; directing the Agency for Health Care Administration to amend the Medicaid state plan that established the Florida Long-term Care Partnership Program for purposes of compliance with provisions of the Social Security Act; revising conditions for qualification for coverage; requiring consultation with the Department of Children and Family Services; amending s. 4, ch. 2005-252, Laws of Florida, to delete a contingency in an effective date; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) of section 409.905, Florida Statutes, is amended to read:

409.905 Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically

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necessary and in accordance with state and federal law.  
Mandatory services rendered by providers in mobile units to  
Medicaid recipients may be restricted by the agency. Nothing in  
this section shall be construed to prevent or limit the agency  
from adjusting fees, reimbursement rates, lengths of stay,  
number of visits, number of services, or any other adjustments  
necessary to comply with the availability of moneys and any  
limitations or directions provided for in the General  
Appropriations Act or chapter 216.

(8) NURSING FACILITY SERVICES.--The agency shall pay for  
24-hour-a-day nursing and rehabilitative services for a  
recipient in a nursing facility licensed under part II of  
chapter 400 or in a rural hospital, as defined in s. 395.602, or  
in a Medicare certified skilled nursing facility operated by a  
hospital, as defined by s. 395.002(11), that is licensed under  
part I of chapter 395, and in accordance with provisions set  
forth in s. 409.908(2)(a), which services are ordered by and  
provided under the direction of a licensed physician. However,  
if a nursing facility has been destroyed or otherwise made  
uninhabitable by natural disaster or other emergency and another  
nursing facility is not available, the agency must pay for  
similar services temporarily in a hospital licensed under part I  
of chapter 395 provided federal funding is approved and  
available. The agency shall pay only for bed-hold days if the  
facility has an occupancy rate of 95 percent or greater. The  
agency is authorized to seek any federal waivers to implement  
this policy. When determining eligibility for nursing and  
rehabilitative services, if the individual is a beneficiary of a

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57 Florida long-term care partnership program policy and has  
58 exhausted the benefits of the policy, the total countable assets  
59 of the individual shall be reduced by an amount equal to the  
60 insurance benefit payments that are made to or on behalf of the  
61 individual.

62 Section 2. Subsection (8) of section 409.905, Florida  
63 Statutes, as amended by chapter 2005-252, Laws of Florida, is  
64 repealed:

65 409.905 Mandatory Medicaid services.--The agency may make  
66 payments for the following services, which are required of the  
67 state by Title XIX of the Social Security Act, furnished by  
68 Medicaid providers to recipients who are determined to be  
69 eligible on the dates on which the services were provided. Any  
70 service under this section shall be provided only when medically  
71 necessary and in accordance with state and federal law.  
72 Mandatory services rendered by providers in mobile units to  
73 Medicaid recipients may be restricted by the agency. Nothing in  
74 this section shall be construed to prevent or limit the agency  
75 from adjusting fees, reimbursement rates, lengths of stay,  
76 number of visits, number of services, or any other adjustments  
77 necessary to comply with the availability of moneys and any  
78 limitations or directions provided for in the General  
79 Appropriations Act or chapter 216.

80 ~~(8) NURSING FACILITY SERVICES. The agency shall pay for~~  
81 ~~24-hour-a-day nursing and rehabilitative services for a~~  
82 ~~recipient in a nursing facility licensed under part II of~~  
83 ~~chapter 400 or in a rural hospital, as defined in s. 395.602, or~~  
84 ~~in a Medicare-certified skilled nursing facility operated by a~~



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85 ~~hospital, as defined by s. 395.002(11), that is licensed under~~  
86 ~~part I of chapter 395, and in accordance with provisions set~~  
87 ~~forth in s. 409.908(2)(a), which services are ordered by and~~  
88 ~~provided under the direction of a licensed physician. However,~~  
89 ~~if a nursing facility has been destroyed or otherwise made~~  
90 ~~uninhabitable by natural disaster or other emergency and another~~  
91 ~~nursing facility is not available, the agency must pay for~~  
92 ~~similar services temporarily in a hospital licensed under part I~~  
93 ~~of chapter 395 provided federal funding is approved and~~  
94 ~~available. The agency shall pay only for bed hold days if the~~  
95 ~~facility has an occupancy rate of 95 percent or greater. When~~  
96 ~~determining eligibility for nursing and rehabilitative services,~~  
97 ~~if the individual is a beneficiary of an approved long term care~~  
98 ~~partnership program policy and has exhausted the benefits of the~~  
99 ~~policy, the total countable assets of the individual shall be~~  
100 ~~reduced by \$1 for each \$1 of benefits paid out under the~~  
101 ~~individual's approved long term care partnership program policy.~~  
102 ~~The agency is authorized to seek any federal waivers to~~  
103 ~~implement this policy.~~

104 Section 3. Section 409.9102, Florida Statutes, as created  
105 by chapter 2005-252, Laws of Florida, is reenacted and amended  
106 to read:

107 409.9102 Florida Long-term Care Partnership Program.--The  
108 Agency for Health Care Administration is directed to amend the  
109 Medicaid state plan establishing ~~establish~~ the Florida Long-term  
110 Care Partnership Program, in compliance with the requirements of  
111 s. 1921(b) of the Social Security Act, as amended, which shall:

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112 (1) Provide incentives for an individual to obtain  
113 insurance to cover the costs of long-term care.

114 (2) Establish standards for long-term care insurance  
115 policies for designation as approved long-term care partnership  
116 program policies in consultation with the Office of Insurance  
117 Regulation.

118 (3) Provide a mechanism to qualify for coverage of the  
119 costs of long-term care needs under Medicaid without first being  
120 required to substantially exhaust his or her resources,  
121 including a provision for the disregard of any assets or  
122 resources in an amount equal to the insurance benefit payments  
123 that are made to or on behalf of an individual who is a  
124 beneficiary under a Florida long-term care partnership program  
125 policy reduction of the individual's asset valuation by \$1 for  
126 each \$1 of benefits paid out under the individual's approved  
127 long-term care partnership program policy as a determination of  
128 Medicaid eligibility, in consultation with the Department of  
129 Children and Family Services.

130 (4) Provide and approve long-term care partnership plan  
131 information distributed to individuals through insurance  
132 companies offering approved partnership policies.

133 (5) Alleviate the financial burden on the state's medical  
134 assistance program by encouraging the pursuit of private  
135 initiatives.

136 Section 4. Section 4 of chapter 2005-252, Laws of Florida,  
137 is amended to read:

138 Section 4. This act shall take effect upon becoming a law,  
139 ~~except that the amendments to section 409.905, Florida Statutes,~~

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140   ~~and the newly created section 409.9102, Florida Statutes,~~  
141   ~~provided in this act shall take effect contingent upon amendment~~  
142   ~~to section 1917(b)(1)(c) of the Social Security Act by the~~  
143   ~~United States Congress to delete the "May 14, 1993," deadline~~  
144   ~~for approval by states of long-term care partnership plans.~~



145       Section 5. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1067      State Long-Term Care Ombudsman Program  
**SPONSOR(S):** Grimsley and others  
**TIED BILLS:**      **IDEN./SIM. BILLS:** SB 1922

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee		DePalma 	Walsh 
2) Governmental Operations Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5) _____			

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### SUMMARY ANALYSIS

HB 1067 clarifies duties and responsibilities of the Office of the State Long-Term Care Ombudsman and the program's state and local ombudsman councils in an attempt to fully implement the Legislature's intent in moving the program under the administration of the Department of Elder Affairs.

The Department of Elder Affairs reports no fiscal impact associated with this bill.

The bill provides that this act is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Empower Families --- The bill streamlines and clarifies state and local ombudsman council duties and responsibilities. In doing so, the councils will be able to more effectively serve the interests of long-term care residents, and potentially improve their quality of life.

#### B. EFFECT OF PROPOSED CHANGES:

##### BACKGROUND

##### The History and Emergence of Ombudsman Programs

The Long-Term Care Ombudsman Program began in 1972 through implementation of five state demonstration projects funded by the Departments of Health, Education and Welfare.<sup>1</sup> The projects formed as a response to growing concerns over the conditions present in our nation's nursing facilities, the care provided therein, and the effectiveness of governmental attempts to actively police and force compliance with state and federal regulations. A year later, the Administration on Aging assumed administrative responsibility for the program, and in 1978 the Long-Term Care Ombudsman Program was amended into the Older Americans Act of 1965<sup>2</sup>.

Today, variations of long-term care ombudsman programs are maintained in all 50 states, the District of Columbia and Puerto Rico. The central responsibilities for all ombudsmen are outlined in Subchapter XI of the Older Americans Act<sup>3</sup> and include:

- identifying, investigating and resolving complaints made by or on behalf of residents;
- providing information to residents about long-term care services;
- representing the interests of residents before governmental agencies and seeking administrative, legal and other remedies to protect residents;
- analyzing, commenting on and recommending changes in laws and regulations pertaining to the health, safety, welfare and rights of residents;
- educating and informing consumers and the general public regarding issues and concerns related to long-term care, and facilitating public comment on laws, regulations, policies and actions;
- promoting the development of citizen organizations to participate in the program;
- providing technical support for the development of resident and family councils to protect the well-being and rights of residents, and
- advocating for changes to improve residents' quality of life and care.

##### Florida's Long-Term Care Ombudsman Program

The state's Long-Term Care Ombudsman Program ("the Program") was established as a volunteer program in 1975 and is presently administered by the Department of Elder Affairs (DOEA).<sup>4</sup> The Program is comprised of 17 local councils, one supervisory statewide council and more than 350 volunteer ombudsmen (each contributing an average of 20 hours per month). It provides advocacy and

<sup>1</sup> *Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*, 1995, Institute of Medicine, available at: <http://www.nap.edu/catalog/9059.html>.

<sup>2</sup> 42 U.S.C.A. s. 3001 et seq.

<sup>3</sup> 42 U.S.C.A. s. 3058g

<sup>4</sup> *Florida's Long-Term Care Ombudsman Program: Real People Helping Real People*, presentation given by the Long-Term Care Ombudsman Program before the House Committee on Elder and Long-Term Care, February 22, 2006.

outreach services to residents of the state's long-term care facilities and their families in a variety of ways.

Program ombudsmen serve as advocates on behalf of residents in the following settings:<sup>5</sup>

Facility Type	Number of Facilities	Number of Beds
Nursing homes	812	80,889
Assisted living facilities	2,249	74,219
Adult family-care homes	469	2,023

Ombudsmen investigate and resolve complaints submitted by, or on behalf of, residents of these facilities who are 60 years of age or older.<sup>6</sup> In 2004, a total of 7,555 complaints were investigated by state ombudsmen.<sup>7</sup> The most frequent complaints made by residents of long-term care facilities were as follows:<sup>8</sup>

Type of Complaint	Number of Complaints
Accidents, injuries and falls	220
Improper transfer or discharge	214
Administration of medication	212
Personal hygiene	203
Call lights or requests for assistance unanswered	171

*Most Frequent Complaints in Nursing Homes, 2004-2005*

Type of Complaint	Number of Complaints
Administration of medication	162
Quality, quantity or variation of facility menus	139
Shortage of staff	107
Billing disputes	85
Cleanliness or housekeeping concerns	78

*Most Frequent Complaints in Assisted Living Facilities and Adult Family-Care Homes, 2004-2005*

In addition to its investigative capacities, the Program is also responsible for monitoring the development and implementation of federal, state and local regulations affecting long-term care facilities, recommending appropriate policy changes, and maintaining a statewide reporting system capable of collecting and analyzing data and providing information on the state long-term care facilities.<sup>9</sup>

Facility inspections<sup>10</sup> are conducted annually by Program ombudsmen, and focus on the rights, health, safety and welfare of residents to ensure that facilities satisfy the numerous needs of their residents in compliance with state and federal regulations. In 2004-05, the Program completed a total of 2,908 inspections statewide, reflecting approximately 82 percent of Florida's licensed long-term care facilities.<sup>11</sup>

<sup>5</sup> Statistics reported in *Florida's Long-Term Care Ombudsman Program Annual Snapshot 2004-2005: Protecting Florida's Long-Term Care Residents*, provided by the Long-Term Care Ombudsman Program.

<sup>6</sup> S. 400.0060, F.S.

<sup>7</sup> 2004 National Ombudsman Reporting System Data Tables, accessed February 28, 2006, Department of Health and Human Services Administration on Aging, available at:

[http://www.aoa.gov/prof/aoaproq/elder\\_rights/LTCombudsman/National\\_and\\_State\\_Data/2004nors/2004nors.asp](http://www.aoa.gov/prof/aoaproq/elder_rights/LTCombudsman/National_and_State_Data/2004nors/2004nors.asp).

<sup>8</sup> *Florida's Long-Term Care Ombudsman Program Annual Snapshot 2004-2005*.

<sup>9</sup> *Ombudsman Services*, accessed February 28, 2006, Long-Term Care Ombudsman Program, available at: [http://ombudsman.myflorida.com/ombudsman\\_services.jsp](http://ombudsman.myflorida.com/ombudsman_services.jsp).

<sup>10</sup> S. 400.0073, F.S.

<sup>11</sup> *Florida's Long-Term Care Ombudsman Program Annual Snapshot 2004-2005*.

The Program provides technical support for the development of resident and family councils to protect the rights of residents. Each of the state's 17 local councils also participates in community education sessions for service organizations, health and nursing home associations, and other community groups in an effort to recruit additional ombudsmen and to educate the public with information about the Program.

## **EFFECT OF PROPOSED CHANGES**

In addition to providing a multitude of technical and conforming changes, HB 1067 makes several substantive modifications to Part I of Chapter 400, F.S.

### Definitions

The bill provides definitions for both "local councils" and "state councils", while simultaneously deleting the age requirement contained in the definition of "resident", which previously provided that ombudsman services were intended for individuals age 60 and older residing in a long-term care facility. The bill specifies that the "ombudsman" is appointed by the Secretary of DOEA to head the Office of State Long-Term Care Ombudsman.

### Duties of Legal Advocate

The legislation amends s. 400.0063(3)(b)(4), F.S., by requiring the office's legal advocate to serve as legal counsel "in consultation with the department's legal counsel" to state and local councils and members.

### Duties and Responsibilities of the Office of State Long-Term Care Ombudsman

HB 1067 requires that residents, their representatives and other interested citizens shall be informed about obtaining program services. The bill also clarifies that the Office of State Long-Term Care Ombudsman administers --- and not merely provides "administrative and technical support" for --- the state and local ombudsman councils. Moreover, the office is given explicit authority to establish and coordinate local councils, and an annual reporting requirement is also established (previously, the state council was responsible for submitting this report; the bill requires the state council to "assist" in preparation of the report). The report is intended to describe the activities of the office and councils, and it is required to combine and analyze complaint and facility condition data; evaluate resident problems; assess overall program success and compliance with provisions of the federal Older Americans Act; and provide recommendations for policy and regulatory changes, while also detailing any relevant recommendations supplied by local councils regarding program functions and activities. Such report is to be submitted to the secretary at least 30 days before the convening of a regular session, whereupon the secretary is required to submit the report to the United States Assistant Secretary for Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of the Department of Children and Family Services, and the Secretary of the Agency for Health Care Administration. The bill clarifies that staff members coordinating local councils will be designated as representatives of the Office of State Long-Term Care Ombudsman.

### Duties and Membership of the State Long-Term Ombudsman Council

The bill specifies that the State Long-Term Ombudsman Council shall serve as an advisory board to assist ombudsman in reaching consensus among local councils on issues affecting either the program generally or residents individually. The bill clarifies that individual members of the state council may enter a long-term care facility involved in an appeal pursuant to newly created s. 400.0074(2), F.S. The bill deletes the requirement of DOEA to develop investigatory and complaint receipt and resolution procedures.



The legislation requires council membership to be by election, provides for removal of council members upon majority vote, and specifies that three at-large council members are to be appointed by the Governor after recommendation by the DOEA Secretary in consultation with the ombudsman. Each local council is provided with the authority to elect, by majority vote, a representative from among local council members to represent council interests on the state council. Whereas previously the council position of any member missing three consecutive regular meetings was declared vacant, the bill specifies that members missing three council meetings within a 1-year period "may" have their seat declared vacant by the ombudsman. The bill limits the state council chair to two consecutive 1-year terms, deletes the requirement that chairs must have served as state council members for at least 1 year, enables the council chair to create additional executive positions as needed, and provides for removal of the council chair upon a two-thirds vote of state council members at any meeting at which a quorum is present. The bill provides that a council quorum is present if more than 50 percent of all active state council members are in attendance at the same meeting. The bill prohibits votes or binding decisions outside of a publicly-noticed meeting at which a quorum is present.

#### Duties and Membership of Local Long-Term Care Ombudsman Councils

In an effort to conform state law to provisions of the Older Americans Act, the bill clarifies that the local ombudsman councils function under the direction of the ombudsman. The bill also provides that the state ombudsman shall designate local councils and their jurisdictional boundaries, and may create additional local councils as necessary to ensure that state residents have adequate access to program services. Also, whereas local councils presently have a duty to represent residents' rights before government agencies, the bill alters this dynamic by requiring a local council to "recommend" that the ombudsman and legal advocate seek administrative, legal and other remedies on behalf of residents.

The bill specifies that local council members must maintain their primary residence within boundaries of the council's jurisdiction, establishes minimum local council membership composition, and removes a cap on the number of volunteers that each local council can recruit. The bill eliminates language in s. 400.0069(4)(b), F.S., encouraging local councils to recruit council members who are 60 years of age or older. Guidelines for application and approval of prospective council members and removal procedures for council members are provided by the legislation. The bill eliminates the limitation on the number of 1-year terms that may be served by a local council chair, authorizes the chair to create additional executive positions as needed, and provides for removal of the council chair upon a two-thirds vote of local council members.

#### Consolidation of Conflict-of-Interest Provisions

The bill consolidates the various conflict of interest provisions<sup>12</sup> scattered throughout Part I of Chapter 400, F.S., into newly-created s. 400.0070, F.S., and requires each office employee and council member to certify that he or she has no conflict of interest. This section will prohibit the ombudsman from having a direct involvement in the licensing or certification of a long-term care facility or provider, and prevents the ombudsman's employment with, ownership of, or investment in, a long-term care facility. DOEA is required to define by rule what situations constitute conflicts of interest and the procedure by which certification of an individual indicating no conflicts of interest occurs.

#### Program Complaint and Investigation Procedures

The bill directs the ombudsman, in consultation with the state council and following approval by the DOEA Secretary, to develop procedures for conducting facility investigations subsequent to receiving a complaint and for conducting onsite administrative assessments of state facilities. The bill deletes the requirement of long-term care facilities to post such procedures in plain view, and specifies that an administrator refusing to allow entrance to the ombudsman or any state or local council member shall be considered to have interfered with such individual in the performance of his or her official duties.

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<sup>12</sup> The provisions include ss. 400.0063(2)(b), 400.0065(3), 400.0067(4), 400.0069(4)(b) and 400.0069(10), F.S.

## State Council Administrative Assessments

The bill requires local councils to conduct, at least annually and in addition to investigations pursuant to a complaint, an onsite administrative "assessment"<sup>13</sup> of each nursing home, assisted living facility, and adult family-care home within its jurisdiction. Local councils are also encouraged to conduct similar onsite administrative assessments of the additional long-term care facilities within its jurisdiction. The assessments are required to be non-duplicative of other state survey and inspection efforts, and shall be conducted at a time and for a duration necessary to produce the information required to carry out council duties.

Advance notice is not to be provided (except for follow-up assessments), and council members physically present are required to identify themselves and cite the relevant statutory authority for the assessment. Such assessments are not to unreasonably interfere with programs and activities of facility residents, and council members may not enter single-family residential units of a facility during an assessment without the permission of the resident or that resident's representative. The bill indicates that the ombudsman may authorize a state or local council member to assist another local council member perform an assessment. The bill specifies that assessments may not be accomplished by forcible entry, but notes that an administrator refusing entry to representatives of the office or a council for the purpose of an assessment shall be considered to have interfered with such individual in the performance of their official duties.

## Complaint Notification and Resolution Procedures

The bill requires that complaints verified as a result of an investigation or assessment and determined to require some measure of remedial action shall be identified in a writing to the long-term care facility administrator, whereupon target dates for taking appropriate remedial action shall be established. The bill specifies that a local council chair who believes residents' rights or welfare are being jeopardized shall notify the ombudsman or legal advocate. Similarly, an ombudsman who believes a facility or its employee has committed a criminal act is required to inform local law enforcement officials.

The bill deletes certain recourses available to the state council in the event a facility fails to take action upon a complaint referred to the state council by a local council, including a provision allowing for recommended agency rule and licensure changes, and a provision permitting referral of the complaint to the state attorney for prosecution. The bill specifies that a state council chair who believes residents' rights or welfare are being jeopardized shall notify the ombudsman or legal advocate.

## Access to Facilities, Residents and Records

The legislation requires long-term care facilities to provide the office, councils and council members access to any portion of the facility, any resident, and his or her medical and social records for review as necessary to investigate or resolve a complaint. Also, the bill provides access to administrative records, policies and documents and, upon request, copies of all licensing and certification records pertaining to a facility. The bill deletes a provision allowing access to resident records where the office has reasonable cause to believe a legal representative who has refused such access is not acting in the best interests of the resident.

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<sup>13</sup> Presently, annual "inspections" of long-term care facilities are required by s. 400.0073, F.S., and are structurally similar to the requirements for administrative assessments in the bill.

### Department Funding<sup>14</sup>

The bill directs the department to meet costs of the program through funds appropriated to it and to include the costs associated with the program when developing its budget requests for consideration by the Governor. The bill allows the department to divert from the federal ombudsman appropriation an amount equal to the department's administrative cost ratio, and directs the remaining allotment from the Older Americans Act to fund direct ombudsman activities.

### Statewide Uniform Reporting System

The bill shifts the responsibility, from DOEA to the office, for maintenance of a statewide uniform reporting system, intended to collect and analyze complaint and facility condition data. Similarly, the responsibility for quarterly publishing and making available information pertaining to the number and type of complaints received is shifted from the state council to the office.

### Training Requirements

The bill specifies that all council members receive a minimum of 20 hours of training upon employment with the office or approval as a council member, and 10 hours of continuing education per year thereafter. The bill requires the ombudsman to approve training curriculum and indicates that such training should address, at a minimum and in addition to other training requirements, resident confidentiality and any other topic recommended by the secretary. The bill prohibits individuals from holding themselves out as representatives of the State Long-Term Care Ombudsman Program, or conducting any program duties, unless first satisfying the training detailed in s. 400.0091, F.S., and becoming certified by the ombudsman.

The bill provides that the act is effective upon becoming law.

## C. SECTION DIRECTORY:

**Section 1.** Amends s. 400.0060, F.S.; providing definitions.

**Section 2.** Amends s. 400.0061, F.S.; revising Legislative findings and intent.

**Section 3.** Amends s. 400.0063, F.S.; relating to the designation and duties of the ombudsman and legal advocate.

**Section 4.** Amends s. 400.0065, F.S., providing duties and responsibilities of the State Long-Term Care Ombudsman Program.

**Section 5.** Repeals s. 400.0066, F.S., relating to the Department of Elderly Affairs' funding of the Office of State Long-Term Care Ombudsman; transfers portions of section to newly-created s. 400.0087, F.S.

**Section 6.** Amends s. 400.0067, F.S., providing duties and membership criteria for the State Long-Term Care Ombudsman Council.

**Section 7.** Amends s. 400.0069, F.S., providing duties and membership criteria for local long-term care ombudsman councils.

**Section 8.** Creates s. 400.0070, F.S., relating to ombudsman conflicts of interest.

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<sup>14</sup> Portions of these funding requirements are contained in s. 400.0066, F.S., which the bill proposes to repeal and re-create in s. 400.0087, F.S.

**Section 9.** Amends s. 400.0071, F.S., relating to State Long-Term Care Ombudsman Program complaint procedures.

**Section 10.** Amends s. 400.0073, F.S., relating to council investigations.

**Section 11.** Creates s. 400.0074, F.S., relating to onsite administrative assessments.

**Section 12.** Amends s. 400.0075, F.S., relating to complaint notification and resolution procedures.

**Section 13.** Amends s. 400.0078, F.S., relating to citizen access to State Long-Term Care Ombudsman Program services.

**Section 14.** Amends s. 400.0079, F.S., relating to reporter and ombudsman immunity.

**Section 15.** Amends s. 400.0081, F.S., relating to facility and records access.

**Section 16.** Amends s. 400.0083, F.S., relating to interference, retaliation and penalties.

**Section 17.** Repeals s. 400.0085, F.S., relating to penalties; incorporates provision into s. 400.0083, F.S.

**Section 18.** Amends s. 400.0087, F.S., relating to department funding and oversight.

**Section 19.** Amends s. 400.0089, F.S., relating to complaint data reports.

**Section 20.** Amends s. 400.0091, F.S., relating to training curriculum and requirements.

**Section 21.** Provides that the act is effective upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

DOEA reports that this bill will have no fiscal impact on state government.

#### **2. Expenditures:**

DOEA reports that this bill will have no fiscal impact on state government.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

DOEA reports that this bill will have no fiscal impact on local government.

#### **2. Expenditures:**

DOEA reports that this bill will have no fiscal impact on local government.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

DOEA reports that this bill will have no fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The municipal/county mandates provision in section 18 of article VII of the Florida Constitution does not appear to be applicable, since the bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The proposal amends rule authority that already exists in law. In addition, Section 8 of the bill requires the department to promulgate a rule to define situations that constitute a "conflict of interest", and the procedure by which an individual certifies that he or she has no conflict of interest.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The proposed change to the definition of "resident" in s. 400.0060(5), F.S., (deleting the requirement that ombudsman services be provided for facility residents 60 years of age or older) conflicts with the jurisdiction of the Statewide Advocacy Council.<sup>15</sup>

Providing that the legal advocate serves as legal counsel to state and local councils and council members "in consultation with the department's legal counsel" raises a possible conflict of interest relating to representation.<sup>16</sup>

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>15</sup> See generally s. 402.164(2)(b), F.S.

<sup>16</sup> See rules 4-1.13 and 4-5.1, Rules Regulating the Florida Bar.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 1067

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Elder & Long-Term Care  
Committee

Representative(s) Grimsley offered the following:

**Amendment**

Remove line(s) 116 - 117 and insert:

(7)~~(5)~~ "Resident" means an individual 60 years of age or  
older who resides in a long-term care facility.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. 1067

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Elder & Long-Term Care  
Committee

Representative(s) Grimsley offered the following:

**Amendment**

Remove line(s) 201 - 202 and insert:

4. Serving as legal counsel to the state and local  
~~ombudsman~~

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

Bill No. 1067

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Elder & Long-Term Care

Committee

Representative(s) Grimsley offered the following:

**Amendment (with title amendments)**

Remove line(s) 442 - 443 and insert:

3. A local council may recommend removal of its elected

===== T I T L E A M E N D M E N T =====

Remove line(s) 20 - 21 and insert:

state council; providing conditions for

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4 (for drafter's use only)

Bill No. **HB 1067**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Elder & Long Term Care Committee  
2 Representative(s) Grimsley offered the following:

3  
4 **Amendment (with directory and title amendments)**

5 Remove line(s) 976 - 984 and insert:

6 (c) Medical and social records of the resident as  
7 necessary to investigate or resolve a complaint if:

8 1. A legal representative ~~guardian~~ of the resident refuses  
9 to give permission; ~~-~~

10 2. The office has reasonable cause to believe that the  
11 representative ~~guardian~~ is not acting in the best interests of  
12 the resident; and ~~-~~

13 3. The state or local council member ~~representative~~  
14 obtains the approval of the ombudsman.

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1                               A bill to be entitled  
2       An act relating to the State Long-Term Care Ombudsman  
3       Program; amending s. 400.0060, F.S.; providing and  
4       revising definitions; amending s. 400.0061, F.S.; revising  
5       legislative findings and intent; amending s. 400.0063,  
6       F.S.; revising provisions relating to qualifications of  
7       the State Long-Term Care Ombudsman; revising duties of the  
8       legal advocate; amending s. 400.0065, F.S.; revising  
9       duties and responsibilities of the State Long-Term Care  
10      Ombudsman; requiring an annual report; deleting provisions  
11      relating to conflict of interest; repealing s. 400.0066,  
12      F.S., relating to the Office of State Long-Term Care  
13      Ombudsman and departments of state government; amending s.  
14      400.0067, F.S.; revising duties and membership of the  
15      State Long-Term Care Ombudsman Council; providing for  
16      election of a local council member from each local council  
17      to provide representation on the state council;  
18      authorizing the Secretary of Elderly Affairs to recommend  
19      to the Governor appointments for at-large positions on the  
20      state council; providing that state council members serve  
21      at the pleasure of the Governor; providing conditions for  
22      removal of members of and for filling vacancies on the  
23      state council; providing for election of officers and  
24      meetings; providing for per diem and travel expenses if  
25      approved by the ombudsman; deleting provisions relating to  
26      conflicts of interest and requests for appropriations;  
27      amending s. 400.0069, F.S.; authorizing the State Long-  
28      Term Care Ombudsman to designate and direct local long-

29        term care ombudsman councils; requiring approval by the  
30        Secretary of Elderly Affairs of jurisdictional boundaries  
31        designated by the ombudsman; revising duties of local  
32        long-term care ombudsman councils; providing requirements  
33        and application for membership, election of officers, and  
34        meetings of local long-term care ombudsman councils;  
35        providing conditions for removal of members; providing for  
36        travel expenses for members of the council; deleting  
37        provisions relating to conflicts of interest; creating s.  
38        400.0070, F.S.; consolidating provisions relating to  
39        conflicts of interest of the ombudsman; providing  
40        rulemaking authority to the Department of Elderly Affairs  
41        regarding conflicts of interest; amending s. 400.0071,  
42        F.S.; establishing procedures for receiving,  
43        investigating, and assessing complaints against long-term  
44        care facilities; deleting provisions requiring the posting  
45        and distribution of copies of such procedures; amending s.  
46        400.0073, F.S.; providing conditions for investigations of  
47        complaints by state and local ombudsman councils;  
48        providing that refusing to allow the ombudsman or a member  
49        of a state or local council to enter a long-term care  
50        facility is a violation of ch. 400, F.S., under certain  
51        circumstances; deleting conditions for onsite  
52        administrative inspections; creating s. 400.0074, F.S.;  
53        providing conditions and requirements for onsite  
54        administrative assessments of nursing homes, assisted  
55        living facilities, and adult family-care homes;  
56        prohibiting forcible entry of long-term care facilities;

57        providing that refusing to allow the ombudsman or a member  
58        of a state or local council to enter a long-term care  
59        facility is a violation of ch. 400, F.S., under certain  
60        circumstances; amending s. 400.0075, F.S.; providing  
61        complaint notification procedures for state and local  
62        councils; providing circumstances in which information  
63        relating to violations by a long-term care facility is  
64        provided to a local law enforcement agency; amending s.  
65        400.0078, F.S.; requiring information relating to the  
66        State Long-Term Care Ombudsman Program to be provided to  
67        residents of long-term care facilities or their  
68        representatives; amending s. 400.0079, F.S.; providing for  
69        immunity from liability for certain persons; amending s.  
70        400.0081, F.S.; requiring long-term care facilities to  
71        provide the Office of State Long-Term Care Ombudsman and  
72        state and local councils and their members with access to  
73        the facility and the records and residents of the  
74        facility; authorizing rather than requiring the department  
75        to adopt rules regarding access to facilities, records,  
76        and residents; amending s. 400.0083, F.S.; prohibiting  
77        certain actions against persons who file complaints;  
78        providing penalties; repealing s. 400.0085, F.S., relating  
79        to a penalty; amending s. 400.0087, F.S.; providing for  
80        oversight by and responsibilities of the department;  
81        requiring the department to provide certain funding for  
82        the State Long-Term Care Ombudsman Program; amending s.  
83        400.0089, F.S.; requiring the office to maintain a data  
84        reporting system relating to complaints about and

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conditions in long-term care facilities and to residents therein; requiring the office to publish and include certain information in its annual report; amending s. 400.0091, F.S.; providing for training of employees of the office and members of the state and local councils; requiring the ombudsman to approve the curriculum and providing contents thereof; requiring certification of employees by the ombudsman; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 400.0060, Florida Statutes, is amended to read:

400.0060 Definitions.--When used in this part, unless the context clearly dictates otherwise ~~requires~~, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2) "Department" means the Department of Elderly Affairs.

(3) "Local council" means a local long-term care ombudsman council designated by the ombudsman pursuant to s. 400.0069.  
Local councils are also known as district long-term care ombudsman councils or district councils.

(4)~~(2)~~ "Long-term care facility" means a ~~skilled~~ nursing home facility, ~~nursing facility~~, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility center.

(5)~~(3)~~ "Office" means the Office of State Long-Term Care Ombudsman created by s. 400.0063.

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(6)(4) "Ombudsman" means the individual appointed by the Secretary of Elderly Affairs designated to head the Office of State Long-Term Care Ombudsman.

(7)(5) "Resident" means an individual ~~60 years of age or older~~ who resides in a long-term care facility.

(8)(6) "Secretary" means the Secretary of Elderly Affairs.

(9) "State council" means the State Long-Term Care Ombudsman Council created by s. 400.0067.

Section 2. Section 400.0061, Florida Statutes, is amended to read:

400.0061 Legislative findings and intent; long-term care facilities.--

(1) The Legislature finds that conditions in long-term care facilities in this state are such that the rights, health, safety, and welfare of residents are not fully ensured by rules of the Department of Elderly Affairs or the Agency for Health Care Administration, or by the good faith of owners or operators of long-term care facilities. Furthermore, there is a need for a formal mechanism whereby a long-term care facility resident, a representative of a long-term care facility resident, or any other concerned citizen ~~or his or her representative~~ may make a complaint against the facility or an employee of the facility ~~its employees~~, or against other persons who are in a position to restrict, interfere with, or threaten the rights, health, safety, or welfare of a long-term care facility ~~the~~ resident. The Legislature finds that concerned citizens are often more effective advocates for ~~of~~ the rights of others than governmental agencies. The Legislature further finds that in

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141 order to be eligible to receive an allotment of funds authorized  
142 and appropriated under the federal Older Americans Act, the  
143 state must establish and operate an Office of State Long-Term  
144 Care Ombudsman, to be headed by the State Long-Term Care  
145 Ombudsman, and carry out a long-term care ombudsman program.

146 (2) It is the intent of the Legislature, therefore, to  
147 utilize voluntary citizen ombudsman councils under the  
148 leadership of the ombudsman, and through them to operate an  
149 ombudsman program which shall, without interference by any  
150 executive agency, undertake to discover, investigate, and  
151 determine the presence of conditions or individuals which  
152 constitute a threat to the rights, health, safety, or welfare of  
153 the residents of long-term care facilities. To ensure that the  
154 effectiveness and efficiency of such investigations are not  
155 impeded by advance notice or delay, the Legislature intends that  
156 the ombudsman and ombudsman councils and their designated  
157 representatives not be required to obtain warrants in order to  
158 enter into or conduct investigations or onsite administrative  
159 assessments ~~inspections~~ of long-term care facilities. It is the  
160 further intent of the Legislature that the environment in long-  
161 term care facilities shall be conducive to the dignity and  
162 independence of residents and that investigations by ombudsman  
163 councils shall further the enforcement of laws, rules, and  
164 regulations that safeguard the health, safety, and welfare of  
165 residents.

166 Section 3. Section 400.0063, Florida Statutes, is amended  
167 to read:

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400.0063 Establishment of Office of State Long-Term Care  
Ombudsman; designation of ombudsman and legal advocate.--

(1) There is created an Office of State Long-Term Care  
Ombudsman in the Department of Elderly Affairs.

(2)(a) The Office of State Long-Term Care Ombudsman shall  
be headed by the State Long-Term Care Ombudsman, who shall have  
~~expertise and experience in the fields of long-term care and~~  
~~advocacy, who shall~~ serve on a full-time basis and shall  
personally, or through representatives of the office, carry out  
the purposes and functions of the office ~~of State Long-Term Care~~  
~~Ombudsman~~ in accordance with state and federal law.

(b) ~~The State Long-Term Care ombudsman shall be appointed~~  
~~by and shall serve at the pleasure of the Secretary of Elderly~~  
~~Affairs. The secretary shall appoint a person who has expertise~~  
~~and experience in the fields of long-term care and advocacy to~~  
~~serve as ombudsman. No person who has a conflict of interest, or~~  
~~has an immediate family member who has a conflict of interest,~~  
~~may be involved in the designation of the ombudsman.~~

(3)(a) There is created in the office ~~of State Long-Term~~  
~~Care Ombudsman~~ the position of legal advocate, who shall be  
selected by and serve at the pleasure of the ombudsman, and who  
shall be a member in good standing of The Florida Bar.

(b) The duties of the legal advocate shall include, but  
not be limited to:

1. Assisting the ombudsman in carrying out the duties of  
the office with respect to the abuse, neglect, or violation of  
rights of residents of long-term care facilities.



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2. Assisting the state and local ~~ombudsman~~ councils in carrying out their responsibilities under this part.

3. Pursuing administrative, initiating and prosecuting legal, and other appropriate remedies on behalf of equitable ~~actions to enforce the rights of long-term care facility residents as defined in this chapter.~~

4. Serving as legal counsel, in conjunction with the department's legal counsel, to the state and local ~~ombudsman~~ councils, or individual members thereof, against whom any suit or other legal action is initiated in connection with the performance of the official duties of the councils or an individual member.

Section 4. Section 400.0065, Florida Statutes, is amended to read:

400.0065 State Long-Term Care Ombudsman; duties and responsibilities; ~~conflict of interest.--~~

(1) The purpose of the Office of State Long-Term Care Ombudsman shall be to:

(a) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities, relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect the health, safety, welfare, or rights of the residents.

(b) Provide services that ~~to~~ assist residents in protecting the health, safety, welfare, and rights of ~~the~~ residents.

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222           (c) Inform residents, their representatives, and other  
223 citizens about obtaining the services of the ~~Office of State~~  
224 Long-Term Care Ombudsman Program and its representatives.

225           (d) Ensure that residents have regular and timely access  
226 to the services provided through the office and that residents  
227 and complainants receive timely responses from representatives  
228 of the office to their complaints.

229           (e) Represent the interests of residents before  
230 governmental agencies and seek administrative, legal, and other  
231 remedies to protect the health, safety, welfare, and rights of  
232 the residents.

233           (f) Administer the ~~Provide administrative and technical~~  
234 ~~assistance to~~ state and local ~~ombudsman~~ councils.

235           (g) Analyze, comment on, and monitor the development and  
236 implementation of federal, state, and local laws, rules, and  
237 regulations, and other governmental policies and actions, that  
238 pertain to the health, safety, welfare, and rights of the  
239 residents, with respect to the adequacy of long-term care  
240 facilities and services in the state, and recommend any changes  
241 in such laws, rules, regulations, policies, and actions as the  
242 office determines to be appropriate and necessary.

243           (h) Provide technical support for the development of  
244 resident and family councils to protect the well-being and  
245 rights of residents.

246           (2) The State Long-Term Care Ombudsman shall have the duty  
247 and authority to:

248           (a) Establish and coordinate ~~Assist and support the~~  
249 ~~efforts of the State Long-Term Care Ombudsman Council in the~~

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~~establishment and coordination of local ombudsman councils~~  
throughout the state.

(b) Perform the duties specified in state and federal law, rules, and regulations.

(c) Within the limits of appropriated federal and state funding ~~authorized and appropriated~~, employ such personnel, ~~including staff for local ombudsman councils~~, as are necessary to perform adequately the functions of the office and provide or contract for legal services to assist the state and local ~~ombudsman~~ councils in the performance of their duties. Staff positions established for the purpose of coordinating the activities of ~~for~~ each local ~~ombudsman~~ council and assisting its members may be ~~established as career service positions~~, and ~~shall be~~ filled by the ombudsman after approval by the secretary. Notwithstanding any other provision of this part, upon certification by the ombudsman that the staff member hired to fill any such position has completed the initial training required under s. 400.0091, such person shall be considered a representative of the State Long-Term Care Ombudsman Program for purposes of this part.

(d) Contract for services necessary to carry out the activities of the office.

(e) Apply for, receive, and accept grants, gifts, or other payments, including, but not limited to, real property, personal property, and services from a governmental entity or other public or private entity or person, and make arrangements for the use of such grants, gifts, or payments.

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(f) Coordinate, to the greatest extent possible, state and local ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses and with legal assistance programs for the poor through adoption of memoranda of understanding and other means.

(g) Enter into a cooperative agreement with the Statewide Advocacy Council ~~and district human rights advocacy committees~~ for the purpose of coordinating and avoiding duplication of advocacy services provided to residents ~~of long-term care~~ facilities.

(h) Enter into a cooperative agreement with the Medicaid Fraud Division as prescribed under s. 731(e)(2)(B) of the Older Americans Act.

(i) Prepare an annual report describing the activities carried out by the office, the state council, and the local councils in the year for which the report is prepared. The ombudsman shall submit the report to the secretary at least 30 days before the convening of the regular session of the Legislature. The secretary shall in turn submit the report to the United States Assistant Secretary for Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of Children and Family Services, and the Secretary of Health Care Administration. The report shall, at a minimum:

1. Contain and analyze data collected concerning complaints about and conditions in long-term care facilities and the disposition of such complaints.

2. Evaluate the problems experienced by residents.

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3. Analyze the successes of the ombudsman program during the preceding year, including an assessment of how successfully the program has carried out its responsibilities under the Older Americans Act.

4. Provide recommendations for policy, regulatory, and statutory changes designed to solve identified problems; resolve residents' complaints; improve residents' lives and quality of care; protect residents' rights, health, safety, and welfare; and remove any barriers to the optimal operation of the State Long-Term Care Ombudsman Program.

5. Contain recommendations from the State Long-Term Care Ombudsman Council regarding program functions and activities and recommendations for policy, regulatory, and statutory changes designed to protect residents' rights, health, safety, and welfare.

6. Contain any relevant recommendations from the local councils regarding program functions and activities.

~~(3) The State Long Term Care Ombudsman shall not:~~

~~(a) Have a direct involvement in the licensing or certification of, or an ownership or investment interest in, a long term care facility or a provider of a long term care service.~~

~~(b) Be employed by, or participate in the management of, a long term care facility.~~

~~(c) Receive, or have a right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation agreement with the owner or operator of a long term care facility.~~

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~~The Department of Elderly Affairs shall adopt rules to establish procedures to identify and eliminate conflicts of interest as described in this subsection.~~

Section 5. Section 400.0066, Florida Statutes, is repealed.

Section 6. Section 400.0067, Florida Statutes, is amended to read:

400.0067 State Long-Term Care Ombudsman Council; duties; membership.--

(1) There is created within the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council.

(2) The State Long-Term Care Ombudsman Council shall:

(a) Serve as an advisory body to assist the ombudsman in reaching a consensus among local ombudsman councils on issues affecting residents and impacting the optimal operation of the program of statewide concern.

(b) Serve as an appellate body in receiving from the local ombudsman councils complaints not resolved at the local level. Any individual member or members of the state ombudsman council may enter any long-term care facility involved in an appeal, pursuant to the conditions specified in s. 400.0074(2) 400.0069(3).

(c) Assist the ombudsman to discover, investigate, and determine the existence of abuse or neglect in any long-term care facility. ~~The Department of Elderly Affairs shall develop procedures relating to such investigations. Investigations may~~

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~~consist, in part, of one or more onsite administrative  
inspections.~~

(d) Assist the ombudsman in eliciting, receiving,  
responding to, and resolving complaints made by or on behalf of  
~~long-term care facility residents and in developing procedures  
relating to the receipt and resolution of such complaints. The  
secretary shall approve all such procedures.~~

(e) Elicit and coordinate state, local, and voluntary  
organizational assistance for the purpose of improving the care  
received by residents ~~of a long-term care facility.~~

(f) Assist the ombudsman in preparing the annual report  
~~described in s. 400.0065. Prepare an annual report describing  
the activities carried out by the ombudsman and the State Long-  
Term Care Ombudsman Council in the year for which the report is  
prepared. The State Long Term Care Ombudsman Council shall  
submit the report to the Secretary of Elderly Affairs. The  
secretary shall in turn submit the report to the Commissioner of  
the United States Administration on Aging, the Governor, the  
President of the Senate, the Speaker of the House of  
Representatives, the minority leaders of the House and Senate,  
the chairpersons of appropriate House and Senate committees, the  
Secretary of Children and Family Services, and the Secretary of  
Health Care Administration. The report shall be submitted by the  
Secretary of Elderly Affairs at least 30 days before the  
convening of the regular session of the Legislature and shall,  
at a minimum:~~

~~1. Contain and analyze data collected concerning  
complaints about and conditions in long-term care facilities.~~

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2. ~~Evaluate the problems experienced by residents of long-term care facilities.~~

3. ~~Contain recommendations for improving the quality of life of the residents and for protecting the health, safety, welfare, and rights of the residents.~~

4. ~~Analyze the success of the ombudsman program during the preceding year and identify the barriers that prevent the optimal operation of the program. The report of the program's successes shall also address the relationship between the state long term care ombudsman program, the Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Children and Family Services, and an assessment of how successfully the state long term care ombudsman program has carried out its responsibilities under the Older Americans Act.~~

5. ~~Provide policy and regulatory and legislative recommendations to solve identified problems; resolve residents' complaints; improve the quality of care and life of the residents; protect the health, safety, welfare, and rights of the residents; and remove the barriers to the optimal operation of the state long term care ombudsman program.~~

6. ~~Contain recommendations from the local ombudsman councils regarding program functions and activities.~~

7. ~~Include a report on the activities of the legal advocate and other legal advocates acting on behalf of the local and state councils.~~

(3)(a) The State Long-Term Care Ombudsman Council shall be composed of one active local council member elected ~~designated~~



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by each local council plus three at-large members ~~persons~~  
appointed by the Governor.

(a) Each local council shall elect by majority vote a  
representative from among the council members to represent the  
interests of the local council on the state council. A local  
council chair may not serve as the representative of the local  
council on the state council.

(b)1. The secretary, after consulting ~~ombudsman, in~~  
~~consultation with the ombudsman secretary,~~ shall submit to the  
Governor a list of persons recommended for appointment to the  
at-large positions on the state council. The list shall not  
include the name of any person who is currently at least eight  
~~names of persons who are not~~ serving on a local council.

2. The Governor shall appoint three at-large members  
chosen from the list, ~~at least one of whom must be over 60 years~~  
~~of age.~~

3. If the Governor does not appoint an at-large member to  
fill a vacant position ~~Governor's appointments are not made~~  
within 60 days after the ~~ombudsman submits~~ the list is  
submitted, the secretary, after consulting with the ombudsman,  
~~in consultation with the secretary,~~ shall appoint an at-large  
member to fill that vacant position ~~three members, one of whom~~  
~~must be over 60 years of age.~~

(c)1. All state council members shall ~~be appointed to~~  
serve 3-year terms.

2. A member of the state ~~Long-Term Care Ombudsman~~ council  
may not serve more than two consecutive terms.

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3. State council members serve at the pleasure of the Governor. A local council may recommend removal of its elected representative from the state council by a majority vote. If the council votes to remove its representative, the local council chair shall immediately notify the ombudsman. The secretary shall advise the Governor of the local council's vote upon receiving notice from the ombudsman. ~~Any vacancy shall be filled in the same manner as the original appointment.~~

4. The position of any member missing three state council meetings within a 1-year period ~~consecutive regular meetings~~ without cause may ~~shall~~ be declared vacant by the ombudsman. The findings of the ombudsman regarding cause shall be final and binding.

5. Any vacancy on the state council shall be filled in the same manner as the original appointment.

(d)1. ~~The state ombudsman~~ council shall elect a chair to serve for a term of 1 year. A chair may not serve more than two consecutive terms ~~chairperson for a term of 1 year from among the members who have served for at least 1 year.~~

2. The chair ~~chairperson~~ shall select a vice chair ~~chairperson~~ from among the members. The vice chair ~~chairperson~~ shall preside over the state council in the absence of the chair ~~chairperson~~.

3. The chair may create additional executive positions as necessary to carry out the duties of the state council. Any person appointed to an executive position shall serve at the pleasure of the chair, and his or her term shall expire on the same day as the term of the chair.

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4. A chair may be immediately removed from office prior to the expiration of his or her term by a vote of two-thirds of all state council members present at any meeting at which a quorum is present. If a chair is removed from office prior to the expiration of his or her term, a replacement chair shall be chosen during the same meeting in the same manner as described in this paragraph, and the term of the replacement chair shall begin immediately. The replacement chair shall serve for the remainder of the term and is eligible to serve two subsequent consecutive terms.

(e)1. The state ~~ombudsman~~ council shall meet upon the call of the chair or upon the call of the ombudsman. The council shall meet chairperson, at least quarterly but may meet ~~or~~ more frequently as needed.

2. A quorum shall be considered present if more than 50 percent of all active state council members are in attendance at the same meeting.

3. Neither the state council nor any of its individual members may vote on or otherwise make any binding decisions that will directly impact the state council or any local council outside of a publicly noticed meeting at which a quorum is present.

(f) Members shall receive no compensation but shall, with approval from the ombudsman, be reimbursed for per diem and travel expenses as provided in s. 112.061.

~~(4) No officer, employee, or representative of the Office of State Long Term Care Ombudsman or of the State Long Term Care Ombudsman Council, nor any member of the immediate family of~~

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~~such officer, employee, or representative, may have a conflict of interest. The ombudsman shall adopt rules to identify and remove conflicts of interest.~~

~~(5) The Department of Elderly Affairs shall make a separate and distinct request for an appropriation for all expenses for the state and local ombudsman councils.~~

Section 7. Section 400.0069, Florida Statutes, is amended to read:

400.0069 Local long-term care ombudsman councils; duties; membership.--

(1) (a) The ombudsman shall designate local long-term care ombudsman councils to carry out the duties of the State Long-Term Care Ombudsman Program within local communities. Each local council shall function under the direction of the ombudsman.

(b) The ombudsman shall ensure that there is ~~There shall~~ be at least one local long-term care ombudsman council operating in each of the department's planning and service areas of the Department of Elderly Affairs, which shall function under the direction of the ombudsman and the state ombudsman council. The ombudsman may create additional local councils as necessary to ensure that residents throughout the state have adequate access to State Long-Term Care Ombudsman Program services. The ombudsman, after approval from the secretary, shall designate the jurisdictional boundaries of each local council.

(2) The duties of the local councils ~~ombudsman council~~ are to:

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(a) ~~To~~ Serve as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents ~~of a long-term care facility.~~

(b) ~~To~~ Discover, investigate, and determine the existence of abuse or neglect in any long-term care facility and to use the procedures provided for in ss. 415.101-415.113 when applicable. ~~Investigations may consist, in part, of one or more onsite administrative inspections.~~

(c) ~~To~~ Elicit, receive, investigate, respond to, and resolve complaints made by, or on behalf of, ~~long-term care facility~~ residents.

(d) ~~To~~ Review and, if necessary, ~~to~~ comment on, ~~for their effect on the rights of long-term care facility residents,~~ all existing or proposed rules, regulations, and other governmental policies and actions relating to long-term care facilities that may potentially have an effect on the rights, health, safety, and welfare of residents.

(e) ~~To~~ Review personal property and money accounts of Medicaid residents who are receiving assistance under the Medicaid program pursuant to an investigation to obtain information regarding a specific complaint or problem.

(f) Recommend that the ombudsman and the legal advocate ~~To represent the interests of residents before government agencies and to~~ seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(g) ~~To~~ Carry out other activities that the ombudsman determines to be appropriate.

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(3) In order to carry out the duties specified in subsection (2), a member of a the local ombudsman council is authorized, ~~pursuant to ss. 400.19(1) and 400.434,~~ to enter any long-term care facility without notice or first obtaining a warrant, subject to the provisions of s. 400.0074(2) ~~400.0073(5).~~

(4) Each local ~~ombudsman~~ council shall be composed of members whose primary residence is located within the boundaries of the local council's jurisdiction.

(a) The ombudsman shall strive to ensure that each local council ~~no less than 15 members and no more than 40 members from the local planning and service area, to~~ include the following persons as members:

1. At least one medical or osteopathic physician whose practice includes or has included a substantial number of geriatric patients and who may ~~have limited~~ practice in a long-term care facility;

2. At least one registered nurse who has geriatric experience, ~~if possible~~;

3. At least one licensed pharmacist;

4. At least one registered dietitian;

5. At least six nursing home residents or representative consumer advocates for nursing home residents;

6. At least three residents of assisted living facilities or adult family-care homes or three representative consumer advocates for alternative long-term care facility residents;

7. At least one attorney; and

8. At least one professional social worker.

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(b) In no case shall the medical director of a long-term care facility or an employee of the agency ~~for Health Care Administration, the department, the Department of Children and Family Services, or the Agency for Persons with Disabilities Department of Elderly Affairs~~ serve as a member or as an ex officio member of a council. ~~Each member of the council shall certify that neither the council member nor any member of the council member's immediate family has any conflict of interest pursuant to subsection (10). Local ombudsman councils are encouraged to recruit council members who are 60 years of age or older.~~

(5) (a) Individuals wishing to join a local council shall submit an application to the ombudsman. The ombudsman shall review the individual's application and advise the secretary of his or her recommendation for approval or disapproval of the candidate's membership on the local council. If the secretary approves of the individual's membership, the individual shall be appointed as a member of the local council.

(b) The secretary may rescind the ombudsman's approval of a member on a local council at any time. If the secretary rescinds the approval of a member on a local council, the ombudsman shall ensure that the individual is immediately removed from the local council on which he or she serves and the individual may no longer represent the State Long-Term Care Ombudsman Program until the secretary provides his or her approval.

(c) A local council may recommend the removal of one or more of its members by submitting to the ombudsman a resolution

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607   adopted by a two-thirds vote of the members of the council  
 608   stating the name of the member or members recommended for  
 609   removal and the reasons for the recommendation. If such a  
 610   recommendation is adopted by a local council, the local council  
 611   chair or district coordinator shall immediately report the  
 612   council's recommendation to the ombudsman. The ombudsman shall  
 613   review the recommendation of the local council and advise the  
 614   secretary of his or her recommendation regarding removal of the  
 615   council member or members. All members shall be appointed to  
 616   ~~serve 3-year terms. Upon expiration of a term and in case of any~~  
 617   ~~other vacancy, the council shall select a replacement by~~  
 618   ~~majority vote. The ombudsman shall review the selection of the~~  
 619   ~~council and recommend approval or disapproval to the Governor.~~  
 620   ~~If no action is taken by the Governor to approve or disapprove~~  
 621   ~~the replacement of a member within 30 days after the ombudsman~~  
 622   ~~has notified the Governor of his or her recommendation, the~~  
 623   ~~replacement shall be considered disapproved and the process for~~  
 624   ~~selection of a replacement shall be repeated.~~

625       (6) (a) Each ~~The local ombudsman~~ council shall elect a  
 626   chair for a term of 1 year. There shall be no limitation on the  
 627   number of terms that an approved member of a local council may  
 628   serve as chair ~~from members who have served at least 1 year.~~

629       (b) The chair shall select a vice chair from among the  
 630   members of the council. The vice chair shall preside over the  
 631   council in the absence of the chair.

632       (c) The chair may create additional executive positions as  
 633   necessary to carry out the duties of the local council. Any  
 634   person appointed to an executive position shall serve at the



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pleasure of the chair, and his or her term shall expire on the same day as the term of the chair.

(d) A chair may be immediately removed from office prior to the expiration of his or her term by a vote of two-thirds of the members of the local council. If any chair is removed from office prior to the expiration of his or her term, a replacement chair shall be elected during the same meeting, and the term of the replacement chair shall begin immediately. The replacement chair shall serve for the remainder of the term of the person he or she replaced.

(7) ~~Each~~ The local ~~ombudsman~~ council shall meet upon the call of ~~its~~ the chair or upon the call of the ombudsman. Each local council shall meet, at least once a month but may meet ~~or~~ more frequently if necessary ~~as needed to handle emergency situations~~.

(8) A member of a local ~~ombudsman~~ council shall receive no compensation but shall, with approval from the ombudsman, be reimbursed for travel expenses both within and outside the jurisdiction of the local council ~~county of residence~~ in accordance with the provisions of s. 112.061.

(9) The local ~~ombudsman~~ councils are authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of their duties. All state agencies shall cooperate with the local ~~ombudsman~~ councils in providing requested information and agency representation ~~representatives~~ at council meetings.

~~(10) No officer, employee, or representative of a local long term care ombudsman council, nor any member of the~~

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~~immediate family of such officer, employee, or representative,  
may have a conflict of interest. The ombudsman shall adopt rules  
to identify and remove conflicts of interest.~~

Section 8. Section 400.0070, Florida Statutes, is created  
to read:

400.0070 Conflicts of interest.--

(1) The ombudsman shall not:

(a) Have a direct involvement in the licensing or  
certification of, or an ownership or investment interest in, a  
long-term care facility or a provider of a long-term care  
service.

(b) Be employed by, or participate in the management of, a  
long-term care facility.

(c) Receive, or have a right to receive, directly or  
indirectly, remuneration, in cash or in kind, under a  
compensation agreement with the owner or operator of a long-term  
care facility.

(2) Each employee of the office, each state council  
member, and each local council member shall certify that he or  
she has no conflict of interest.

(3) The department shall define by rule:

(a) Situations that constitute a person having a conflict  
of interest that could materially affect the objectivity or  
capacity of a person to serve on an ombudsman council, or as an  
employee of the office, while carrying out the purposes of the  
State Long-Term Care Ombudsman Program as specified in this  
part.

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(b) The procedure by which a person listed in subsection (2) shall certify that he or she has no conflict of interest.

Section 9. Section 400.0071, Florida Statutes, is amended to read:

400.0071 State Long-Term Care Ombudsman Program complaint procedures.--

(1) ~~The state ombudsman, in consultation with the state council, shall develop recommend to the ombudsman and the secretary~~ state and local procedures for:

(a) ~~Receiving complaints against a nursing home or long-term care facility or an its employee of a long-term care facility.~~

(b) Conducting investigations of a long-term care facility or an employee or employees of such a facility subsequent to receiving a complaint.

(c) Conducting onsite administrative assessments of long-term care facilities. ~~The procedures shall be implemented after the approval of the ombudsman and the secretary.~~

(2) The ombudsman shall implement all procedures developed under this section after receiving approval from the secretary. ~~These procedures shall be posted in full view in every nursing home or long term care facility. Every resident or representative of a resident shall receive, upon admission to a nursing home or long term care facility, a printed copy of the procedures of the state and the local ombudsman councils.~~

Section 10. Section 400.0073, Florida Statutes, is amended to read:

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400.0073 State and local ombudsman council  
investigations.--

(1) A local ~~ombudsman~~ council shall investigate, within a reasonable time after a complaint is made, any complaint of a resident, a ~~ex~~ representative of a resident, or any other credible source based on an action or omission by an administrator, an ~~ex~~ employee, or a representative of a ~~nursing home~~ ~~or~~ long-term care facility which might be:

(a) Contrary to law;~~;~~

(b) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;~~;~~

(c) Based on a mistake of fact;~~;~~

(d) Based on improper or irrelevant grounds;~~;~~

(e) Unaccompanied by an adequate statement of reasons;~~;~~

(f) Performed in an inefficient manner; or

(g) Otherwise adversely affecting the health, safety, welfare, or rights of a resident ~~erroneous~~.

(2) In an investigation, both the state and local ~~ombudsman~~ councils have the authority to hold public hearings.

(3) Subsequent to an appeal from a local ~~ombudsman~~ council, the state ~~ombudsman~~ council may investigate any complaint received by the local council involving a ~~nursing home~~ ~~or~~ long-term care facility or a resident.

(4) If the ombudsman or any state or local council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the office, the state council, or the local council in the performance of official

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duties as described in s. 400.0083(1) and to have committed a violation of this part. The ombudsman shall report a facility's refusal to allow entry to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 400.414, s. 400.419, s. 400.6194, or s. 400.6196. In addition to any specific investigation made pursuant to a complaint, the local ombudsman council shall conduct, at least annually, an investigation, which shall consist, in part, of an onsite administrative inspection, of each nursing home or long term care facility within its jurisdiction. This inspection shall focus on the rights, health, safety, and welfare of the residents.

(5) Any onsite administrative inspection conducted by an ombudsman council shall be subject to the following:

(a) All inspections shall be at times and for durations necessary to produce the information required to carry out the duties of the council.

(b) No advance notice of an inspection shall be provided to any nursing home or long term care facility, except that notice of followup inspections on specific problems may be provided.

(c) Inspections shall be conducted in a manner which will impose no unreasonable burden on nursing homes or long term care facilities, consistent with the underlying purposes of this part. Unnecessary duplication of efforts among council members or the councils shall be reduced to the extent possible.

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~~(d) Any ombudsman council member physically present for the inspection shall identify himself or herself and the statutory authority for his or her inspection of the facility.~~

~~(e) Inspections may not unreasonably interfere with the programs and activities of clients within the facility.~~

~~Ombudsman council members shall respect the rights of residents.~~

~~(f) All inspections shall be limited to compliance with parts II, III, and VII of this chapter and 42 U.S.C. ss. 1396(a) et seq., and any rules or regulations promulgated pursuant to such laws.~~

~~(g) No ombudsman council member shall enter a single-family residential unit within a long-term care facility without the permission of the resident or the representative of the resident.~~

~~(h) Any inspection resulting from a specific complaint made to an ombudsman council concerning a facility shall be conducted within a reasonable time after the complaint is made.~~

~~(6) An inspection may not be accomplished by forcible entry. Refusal of a long-term care facility to allow entry of any ombudsman council member constitutes a violation of part II, part III, or part VII of this chapter.~~

Section 11. Section 400.0074, Florida Statutes, is created to read:

400.0074 Local ombudsman council onsite administrative assessments.--

(1) In addition to any specific investigation conducted pursuant to a complaint, the local council shall conduct, at least annually, an onsite administrative assessment of each

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nursing home, assisted living facility, and adult family-care home within its jurisdiction. This administrative assessment shall focus on factors affecting the rights, health, safety, and welfare of the residents. Each local council is encouraged to conduct a similar onsite administrative assessment of each additional long-term care facility within its jurisdiction.

(2) An onsite administrative assessment conducted by a local council shall be subject to the following conditions:

(a) To the extent possible and reasonable, the administrative assessments shall not duplicate the efforts of the agency surveys and inspections conducted under parts II, III, and VII of this chapter.

(b) An administrative assessment shall be conducted at a time and for a duration necessary to produce the information required to carry out the duties of the local council.

(c) Advance notice of an administrative assessment may not be provided to a long-term care facility, except that notice of followup assessments on specific problems may be provided.

(d) A local council member physically present for the administrative assessment shall identify himself or herself and cite the specific statutory authority for his or her assessment of the facility.

(e) An administrative assessment may not unreasonably interfere with the programs and activities of residents.

(f) A local council member may not enter a single-family residential unit within a long-term care facility during an administrative assessment without the permission of the resident or the representative of the resident.

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(3) Regardless of jurisdiction, the ombudsman may authorize a state or local council member to assist another local council to perform the administrative assessments described in this section.

(4) An onsite administrative assessment may not be accomplished by forcible entry. However, if the ombudsman or a state or local council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the office, the state council, or the local council in the performance of official duties as described in s. 400.0083(1) and to have committed a violation of this part. The ombudsman shall report the refusal by a facility to allow entry to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 400.414, s. 400.419, s. 400.6194, or s. 400.6196.

Section 12. Section 400.0075, Florida Statutes, is amended to read:

400.0075 Complaint notification and resolution procedures.--

(1)(a) Any complaint or, including any problem verified identified by an ombudsman council as a result of an investigation or onsite administrative assessment, which complaint or problem is determined to require, deemed valid and requiring remedial action by the local ombudsman council, shall be identified and brought to the attention of the long-term care facility administrator in writing. Upon receipt of such



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document, the administrator, ~~in concurrence~~ with the concurrence  
of the local ~~ombudsman~~ council chair, shall establish target  
dates for taking appropriate remedial action. If, by the target  
date, the remedial action is not completed or forthcoming, the  
local ~~ombudsman~~ council chair may, after obtaining approval from  
the ombudsman and a majority of the members of the local  
council:

1.~~(a)~~ Extend the target date if the chair ~~council~~ has  
reason to believe such action would facilitate the resolution of  
the complaint.

2.~~(b)~~ In accordance with s. 400.0077, publicize the  
complaint, the recommendations of the council, and the response  
of the long-term care facility.

3.~~(c)~~ Refer the complaint to the state ~~ombudsman~~ council.

(b) If the local council chair believes that the health,  
safety, welfare, or rights of the resident are in imminent  
danger, the chair shall notify the ombudsman or legal advocate,  
who, after verifying that such imminent danger exists, shall  
~~local long-term care ombudsman council may~~ seek immediate legal  
or administrative remedies to protect the resident.

(c) If the ombudsman has reason to believe that the long-  
term care facility or an employee of the facility has committed  
a criminal act, the ombudsman shall provide the local law  
enforcement agency with the relevant information to initiate an  
investigation of the case.

(2) (a) Upon referral from a the local ~~ombudsman~~ council,  
the state ~~ombudsman~~ council shall assume the responsibility for  
the disposition of the complaint. If a long-term care facility

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884 fails to take action on a complaint ~~found valid~~ by the state  
885 ~~ombudsman~~ council, the state council may, after obtaining  
886 approval from the ombudsman and a majority of the state council  
887 members:

888 1.(a) In accordance with s. 400.0077, publicize the  
889 complaint, the recommendations of the local or state council,  
890 and the response of the long-term care facility.

891 2.(b) Recommend to the department and the agency a series  
892 of facility reviews pursuant to s. 400.19~~(4)~~, s. 400.434, or s.  
893 400.619 to ensure assure correction and nonrecurrence of  
894 conditions that give rise to complaints against a long-term care  
895 facility.

896 ~~(c) Recommend to the agency changes in rules for~~  
897 ~~inspecting and licensing or certifying long-term care~~  
898 ~~facilities, and recommend to the Agency for Health Care~~  
899 ~~Administration changes in rules for licensing and regulating~~  
900 ~~long-term care facilities.~~

901 ~~(d) Refer the complaint to the state attorney for~~  
902 ~~prosecution if there is reason to believe the long-term care~~  
903 ~~facility or its employee is guilty of a criminal act.~~

904 3.(e) Recommend to the department and the agency for  
905 ~~Health Care Administration~~ that the long-term care facility no  
906 longer receive payments under any ~~the~~ state ~~Medical~~ assistance  
907 program, including ~~(Medicaid)~~.

908 4.(f) Recommend ~~to that~~ the department and the agency that  
909 ~~initiate~~ procedures be initiated for revocation of the long-term  
910 care facility's license in accordance with chapter 120.

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~~(g) Seek legal, administrative, or other remedies to protect the health, safety, welfare, or rights of the resident.~~

(b) If the state council chair believes that the health, safety, welfare, or rights of the resident are in imminent danger, the chair shall notify the ombudsman or legal advocate, who, after verifying that such imminent danger exists, State Long-Term Care Ombudsman Council shall seek immediate legal or administrative remedies to protect the resident.

(c) If the ombudsman has reason to believe that the long-term care facility or an employee of the facility has committed a criminal act, the ombudsman shall provide local law enforcement with the relevant information to initiate an investigation of the case.

~~(3) The state ombudsman council shall provide, as part of its annual report required pursuant to s. 400.0067(2)(f), information relating to the disposition of all complaints to the Department of Elderly Affairs.~~

Section 13. Section 400.0078, Florida Statutes, is amended to read:

400.0078 Citizen access to State Long-Term Care Ombudsman Program services ~~Statewide toll-free telephone number.--~~

(1) The office of State Long-Term Care Ombudsman shall establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents nursing facilities.

(2) Every resident or representative of a resident shall receive, upon admission to a long-term care facility, information regarding the purpose of the State Long-Term Care

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939 Ombudsman Program, the statewide toll-free telephone number for  
 940 receiving complaints, and other relevant information regarding  
 941 how to contact the program. Residents or their representatives  
 942 must be furnished additional copies of this information upon  
 943 request.

944       Section 14. Section 400.0079, Florida Statutes, is amended  
 945 to read:

946           400.0079 Immunity.--

947           (1) Any person making a complaint pursuant to this part  
 948 ~~act~~ who does so in good faith shall be immune from any  
 949 liability, civil or criminal, that otherwise might be incurred  
 950 or imposed as a direct or indirect result of making the  
 951 complaint.

952           (2) The ombudsman or any person authorized by the  
 953 ombudsman to act ~~acting~~ on behalf of the office, as well as all  
 954 members of State Long-Term Care Ombudsman ~~or the state and or a~~  
 955 local councils, long-term care ombudsman council shall be immune  
 956 from any liability, civil or criminal, that otherwise might be  
 957 incurred or imposed, during the good faith performance of  
 958 official duties.

959       Section 15. Section 400.0081, Florida Statutes, is amended  
 960 to read:

961           400.0081 Access to facilities, residents, and records.--

962           (1) A long-term care facility shall provide the office of  
 963 ~~State Long-Term Care Ombudsman, the state Long-Term Care~~  
 964 ~~Ombudsman council~~ and its members, and the local councils and  
 965 their members ~~long-term care ombudsman councils, or their~~  
 966 ~~representatives, shall have access to:~~

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(a) Any portion of the long-term care facility and any resident as necessary to investigate or resolve a complaint facilities and residents.

(b) Medical and social records of a resident for review as necessary to investigate or resolve a complaint, if:

1. The office has the permission of the resident or the legal representative of the resident; or

2. The resident is unable to consent to the review and has no legal representative.

(c) Medical and social records of the resident as necessary to investigate or resolve a complaint, if:

1. A legal representative guardian of the resident refuses to give permission.

2. The office has reasonable cause to believe that the representative guardian is not acting in the best interests of the resident.

3. The state or local council member representative obtains the approval of the ombudsman.

(d) The administrative records, policies, and documents to which ~~the residents,~~ or the general public, have access.

(e) Upon request, copies of all licensing and certification records maintained by the state with respect to a long-term care facility.

~~(2) Notwithstanding paragraph (1)(b), if, pursuant to a complaint investigation by the state ombudsman council or a local ombudsman council, the legal representative of the resident refuses to give permission for the release of the resident's records, and if the Office of State Long Term Care~~

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~~Ombudsman has reasonable cause to find that the legal representative is not acting in the best interests of the resident, the medical and social records of the resident must be made available to the state or local council as is necessary for the members of the council to investigate the complaint.~~

~~(2)(3)~~ The department of Elderly Affairs, in consultation with the ombudsman and the state Long Term Care Ombudsman council, may shall adopt rules to establish procedures to ensure access to facilities, residents, and records as described in this section.

Section 16. Section 400.0083, Florida Statutes, is amended to read:

400.0083 Interference; retaliation; penalties.--

(1) It shall be unlawful for any person, long-term care facility, or other entity to willfully interfere with a representative of the office of ~~State Long Term Care Ombudsman~~, the state ~~Long Term Care Ombudsman~~ council, or a local ~~long term care ombudsman~~ council in the performance of official duties.

(2) It shall be unlawful for any person, long-term care facility, or other entity to knowingly or willfully take action or retaliate against any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the office of ~~State Long Term Care Ombudsman~~, the state ~~Long Term Care Ombudsman~~ council, or a local ~~long term care ombudsman~~ council.

~~(3)(a)~~ Any person, long-term care facility, or other entity that ~~who~~ violates this section:

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(a) Shall be liable for damages and equitable relief as determined by law.

~~(b) Any person, long term care facility, or other entity who violates this section~~ Commits a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 17. Section 400.0085, Florida Statutes, is repealed.

Section 18. Section 400.0087, Florida Statutes, is amended to read:

400.0087 Department Agency oversight; funding.--

(1) The department shall meet the costs associated with the State Long-Term Care Ombudsman Program from funds appropriated to it.

(a) The department shall include the costs associated with support of the State Long-Term Care Ombudsman Program when developing its budget requests for consideration by the Governor and submittal to the Legislature.

(b) The department may divert from the federal ombudsman appropriation an amount equal to the department's administrative cost ratio to cover the costs associated with administering the program. The remaining allotment from the Older Americans Act program shall be expended on direct ombudsman activities.

~~(2)(1)~~ The department of Elderly Affairs shall monitor the office, the state council, and the local ombudsman councils to ensure that each is responsible for carrying out the duties delegated to it by state by s. 400.0069 and federal law. The department, in consultation with the ombudsman, shall adopt

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1049 ~~rules to establish the policies and procedures for the~~  
1050 ~~monitoring of local ombudsman councils.~~

1051 (3)~~(2)~~ The department is responsible for ensuring that the  
1052 office:

1053 (a) Has the objectivity and independence required to  
1054 qualify it for funding under the federal Older Americans Act.

1055 (b) of State Long-Term Care Ombudsman Provides information  
1056 to public and private agencies, legislators, and others.~~†~~

1057 (c) Provides appropriate training to representatives of  
1058 the office or of the state or local ~~long-term care ombudsman~~  
1059 ~~councils.~~~~†~~ and

1060 (d) Coordinates ombudsman services with the Advocacy  
1061 Center for Persons with Disabilities and with providers of legal  
1062 services to residents of long-term care facilities in compliance  
1063 with state and federal laws.

1064 (4)~~(3)~~ The department ~~of Elderly Affairs is the designated~~  
1065 ~~state unit on aging for purposes of complying with the federal~~  
1066 ~~Older Americans Act. The Department of Elderly Affairs shall~~  
1067 ~~ensure that the ombudsman program has the objectivity and~~  
1068 ~~independence required to qualify it for funding under the~~  
1069 ~~federal Older Americans Act, and shall carry out the long-term~~  
1070 ~~care ombudsman program through the Office of State Long-Term~~  
1071 ~~Care Ombudsman. The Department of Elderly Affairs shall also:~~

1072 (a) Receive and disburse state and federal funds for  
1073 purposes that the state ombudsman council has formulated in  
1074 accordance with the Older Americans Act.

1075 (b) Whenever necessary, act as liaison between agencies  
1076 and branches of the federal and state governments and the State



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~~Long-Term Care Ombudsman Program representatives, the staffs of the state and local ombudsman councils, and members of the state and local ombudsman councils.~~

Section 19. Section 400.0089, Florida Statutes, is amended to read:

400.0089 Complaint data Agency reports.--The office ~~Department of Elderly Affairs~~ shall maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to residents, for the purpose of identifying and resolving significant problems. ~~The department and the State Long-Term Care Ombudsman Council shall submit such data as part of its annual report required pursuant to s. 400.0067(2)(f) to the Agency for Health Care Administration, the Department of Children and Family Services, the Florida Statewide Advocacy Council, the Advocacy Center for Persons with Disabilities, the Commissioner for the United States Administration on Aging, the National Ombudsman Resource Center, and any other state or federal entities that the ombudsman determines appropriate. The~~ office State Long-Term Care Ombudsman Council shall publish quarterly and make readily available information pertaining to the number and types of complaints received by the State Long-Term Care Ombudsman Program and shall include such information in the annual report required under s. 400.0065.

Section 20. Section 400.0091, Florida Statutes, is amended to read:

400.0091 Training.--The ombudsman shall ensure that ~~provide~~ appropriate training is provided to all employees of the

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1105 office of ~~State Long Term Care Ombudsman~~ and to the members of  
1106 the state and local ~~long term care ombudsman~~ councils, ~~including~~  
1107 ~~all unpaid volunteers.~~

1108       (1) All state and local council members ~~volunteers~~ and  
1109 ~~appropriate~~ employees of the office shall ~~of State Long Term~~  
1110 ~~Care Ombudsman must~~ be given a minimum of 20 hours of training  
1111 upon employment with the office or approval ~~enrollment~~ as a  
1112 state or local council member ~~volunteer~~ and 10 hours of  
1113 continuing education annually thereafter.

1114       (2) The ombudsman shall approve the curriculum for the  
1115 initial and continuing education training, which must ~~cover~~, at  
1116 a minimum, address:

1117       (a) Resident confidentiality.

1118       (b) Guardianships and powers of attorney.

1119       (c) Medication administration.

1120       (d) Care and medication of residents with dementia and  
1121 Alzheimer's disease.

1122       (e) Accounting for residents' funds.

1123       (f) Discharge rights and responsibilities. ~~and~~

1124       (g) Cultural sensitivity.

1125       (h) Any other topic recommended by the secretary.

1126       (3) No employee, officer, or representative of the office  
1127 or of the state or local ~~long term care ombudsman~~ councils,  
1128 other than the ombudsman, may hold himself or herself out as a  
1129 representative of the State Long-Term Care Ombudsman Program or  
1130 conduct ~~carry out~~ any authorized program ~~ombudsman~~ duty  
1131 described in this part ~~or responsibility~~ unless the person has  
1132 received the training required by this section and has been

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1133 certified ~~approved~~ by the ombudsman as qualified to carry out  
 1134 ombudsman activities on behalf of the office or the state or  
 1135 local ~~long-term-care-ombudsman~~ councils.

1136       Section 21. This act shall take effect upon becoming a  
 1137 law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7027    PCB GO 06-13    OGSR Long-term Care Facilities  
**SPONSOR(S):** Governmental Operations Committee, Rivera  
**TIED BILLS:** None    **IDEN./SIM. BILLS:** SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	4 Y, 2 N	Williamson	Williamson
1) Elder & Long-Term Care Committee		Walsh <i>W</i>	Walsh <i>W</i>
2) State Administration Council			
3) _____			
4) _____			
5) _____			

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2<sup>nd</sup> of the fifth year after enactment.

The bill reenacts the public records and public meetings exemptions regarding incident reports reported by a nursing home or assisted living facility. The exemptions will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

In 2001, the Legislature required nursing homes to implement an internal risk management and quality assurance program to investigate and analyze the frequency and cause of specific types of adverse incidents.<sup>1</sup> The Legislature also authorized assisted living facilities to voluntarily establish a risk management and quality assurance program.<sup>2</sup> Both are required to report adverse incidents to the Agency for Health Care Administration (AHCA).<sup>3</sup>

For purposes of reporting to AHCA, the term “adverse incident” means:

- An event over which facility personnel could exercise control and that is associated in whole or in part with the facility’s intervention, and that results in:
  - Death;
  - Brain or spinal injury;
  - Permanent disfigurement;
  - Fracture or dislocation of bones or joints;
  - A limitation of neurological, physical, or sensory function;<sup>4</sup>
  - A condition that required medical attention to which the resident has not given his or her informed consent; or
  - Any condition that requires the transfer of the resident to a unit providing a more acute level of care due to the adverse incident;
- Abuse, neglect, or exploitation as defined in s. 415.102, F.S.;
- Abuse, neglect and harm as defined in s. 39.01, F.S.;<sup>5</sup>
- Resident elopement; or
- Events reported to law enforcement.<sup>6</sup>

Current law provides a public records and public meetings exemption with regards to incident reports.<sup>7</sup> Incident reports filed with a facility’s risk manager and administrator, notifications of the occurrence of an adverse incident, and adverse incident reports are confidential and exempt<sup>8</sup> from public records

<sup>1</sup> Every nursing home must establish an internal risk management and quality assurance program to assess resident care practices; review facility quality indicators, facility incident reports, deficiencies cited by the Agency for Health Care Administration (AHCA), and resident grievances; and develop plans of action to correct and quickly respond to identified quality deficiencies. The nursing home administrator is responsible for the program. Subsections (1) and (2) of section 400.147, F.S.

<sup>2</sup> The purpose of the program is to assess resident care practices, facility incident reports, deficiencies cited by AHCA, adverse incident reports, and resident grievances. Section 400.423(1), F.S.

<sup>3</sup> Sections 400.147(7), 400.147(8), 400.423(3), and 400.423(4), F.S.

<sup>4</sup> This provision is not included in the definition of adverse incident for purposes of assisted living facility reporting.

<sup>5</sup> This provision is not included in the definition of adverse incident for purposes of assisted living facility reporting.

<sup>6</sup> Sections 400.147(5) and 400.423(2), F.S.

<sup>7</sup> Section 400.119, F.S.

<sup>8</sup> There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all

requirements. Confidential and exempt records are available to a regulatory board for purposes of disciplinary action<sup>9</sup> and to a law enforcement agency if criminal activity is suspected.<sup>10</sup>

Meetings of an internal risk management and quality assurance committee of a nursing home or assisted living facility are exempt from public meetings requirements.<sup>11</sup> Records of the exempt meetings are confidential and exempt from public records requirements.<sup>12</sup>

Pursuant to the Open Government Sunset Review Act,<sup>13</sup> the exemptions will repeal on October 2, 2006, unless reenacted by the Legislature.

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public records and public meetings exemptions. It makes editorial changes and reorganizes the section.

#### **C. SECTION DIRECTORY:**

Section 1 amends s. 400.119, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an effective date of October 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None. This bill does not create, modify, amend, or eliminate a state revenue source.

#### **2. Expenditures:**

See FISCAL COMMENTS.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None. This bill does not create, modify, amend, or eliminate a local revenue source.

#### **2. Expenditures:**

None. This bill does not create, modify, amend, or eliminate local expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

See FISCAL COMMENTS.

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circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>9</sup> Confidential and exempt records obtained by a regulatory board are not available to the public as part of the record of investigation and prosecution in a disciplinary proceeding; however, upon request, such records are available to the health care professional against whom probable cause has been found. Section 400.119(2), F.S.

<sup>10</sup> The law enforcement agency must maintain the confidential and exempt status of the records until criminal charges are filed. Section 400.119(3), F.S.

<sup>11</sup> Section 400.119(4), F.S.

<sup>12</sup> Section 400.119(1), F.S.

<sup>13</sup> Section 119.15, F.S.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state expenditures, as well as nursing homes and assisted living facilities. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government, as well as nursing homes and assisted living facilities, may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act**

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.



#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act regarding long-term care facilities; amending s. 400.119, F.S., which provides exemptions from public records requirements for specified reports and notifications with respect to long-term care facilities licensed under pt. II or pt. III of ch. 400, F.S., and which provides an exemption from public meeting requirements for the meetings of an internal risk management and quality assurance committee of a long-term care facility and an exemption from public records requirements for the records of such meetings; reorganizing provisions and making editorial changes; removing the scheduled repeal of the exemptions under the Open Government Sunset Review Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 400.119, Florida Statutes, is amended to read:

400.119 Confidentiality of records and meetings of risk management and quality assurance committees.--

(1) ~~Records of meetings of the risk management and quality assurance committee of a long term care facility licensed under this part or part III of this chapter, as well as Incident reports filed with the faecility's risk manager and administrator of a long-term care facility licensed under this part or part~~

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III of this chapter, notifications of the occurrence of an adverse incident, and adverse incident reports from the facility are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2)(a) The meetings of an internal risk management and quality assurance committee of a long-term care facility licensed under this part or part III of this chapter are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Records of those meetings are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3)(a) ~~However,~~ If the Agency for Health Care Administration has a reasonable belief that conduct by a staff member or employee of a facility is criminal activity or grounds for disciplinary action by a regulatory board, the agency may disclose ~~such~~ records made confidential and exempt pursuant to this section to the appropriate law enforcement agency or regulatory board.

(b) Records disclosed to a law enforcement agency remain confidential and exempt until criminal charges are filed.

(4)-(2) ~~Records made that are confidential and exempt under this section subsection (1)~~ and that are obtained by a regulatory board are not available to the public as part of the record of investigation and prosecution in a disciplinary proceeding made available to the public by the agency or the appropriate regulatory board. However, the agency or the appropriate regulatory board shall make available, upon request by a health care professional against whom probable cause has

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57 | been found, any such records that form the basis of the  
58 | determination of probable cause.

59 |     ~~(3) Records disclosed to a law enforcement agency pursuant~~  
60 | ~~to subsection (1) remain confidential and exempt until criminal~~  
61 | ~~charges are filed.~~

62 |     ~~(4) The meetings of an internal risk management and~~  
63 | ~~quality assurance committee of a long term care facility~~  
64 | ~~licensed under this part or part III of this chapter are exempt~~  
65 | ~~from s. 286.011 and s. 24(b), Art. I of the State Constitution~~  
66 | ~~and are not open to the public.~~

67 |     ~~(5) This section is subject to the Open Government Sunset~~  
68 | ~~Review Act of 1995 in accordance with s. 119.15, and shall stand~~  
69 | ~~repealed on October 2, 2006, unless reviewed and saved from~~  
70 | ~~repeal through reenactment by the Legislature.~~

71 |     Section 2. This act shall take effect October 1, 2006.

# OPPAGA PRESENTATION

# Service Use for Nursing Home Diversion Waiver Clients Depends on Living Situation

A Presentation to the Florida House Committee on Elder  
and Long Term Care

March 8, 2006

Mary Alice Ilye, Ph.D.  
Senior Legislative Analyst

# **Nursing Home Diversion Program Criteria**

- 65 years of age or older
- Medicare Parts A & B eligible
- Medicaid eligible for the Institutional Care Program level
- Be at risk or nursing home placement and meet one or more clinical frailty criteria
- Must live in the program area

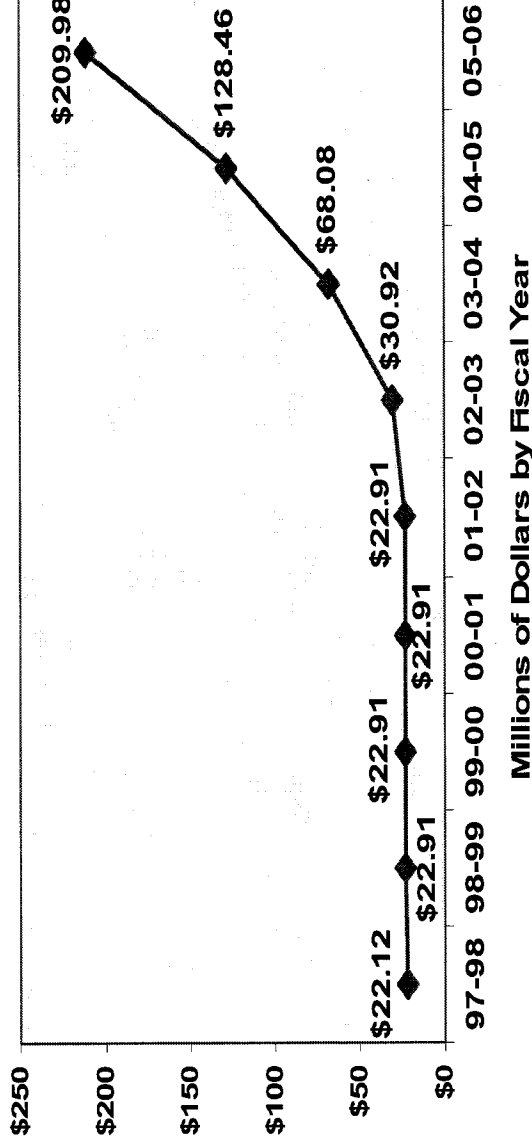
# **NHD Provides Both Acute Medical and Long Term Community Services**

- Acute medical services such as doctor visits, prescribed drugs, inpatient and outpatient services
- Long term community care services such as case management, assisted living, personal care, home delivered meals and housekeeping



# Growth in Nursing Home Diversion Enrollment and Funding

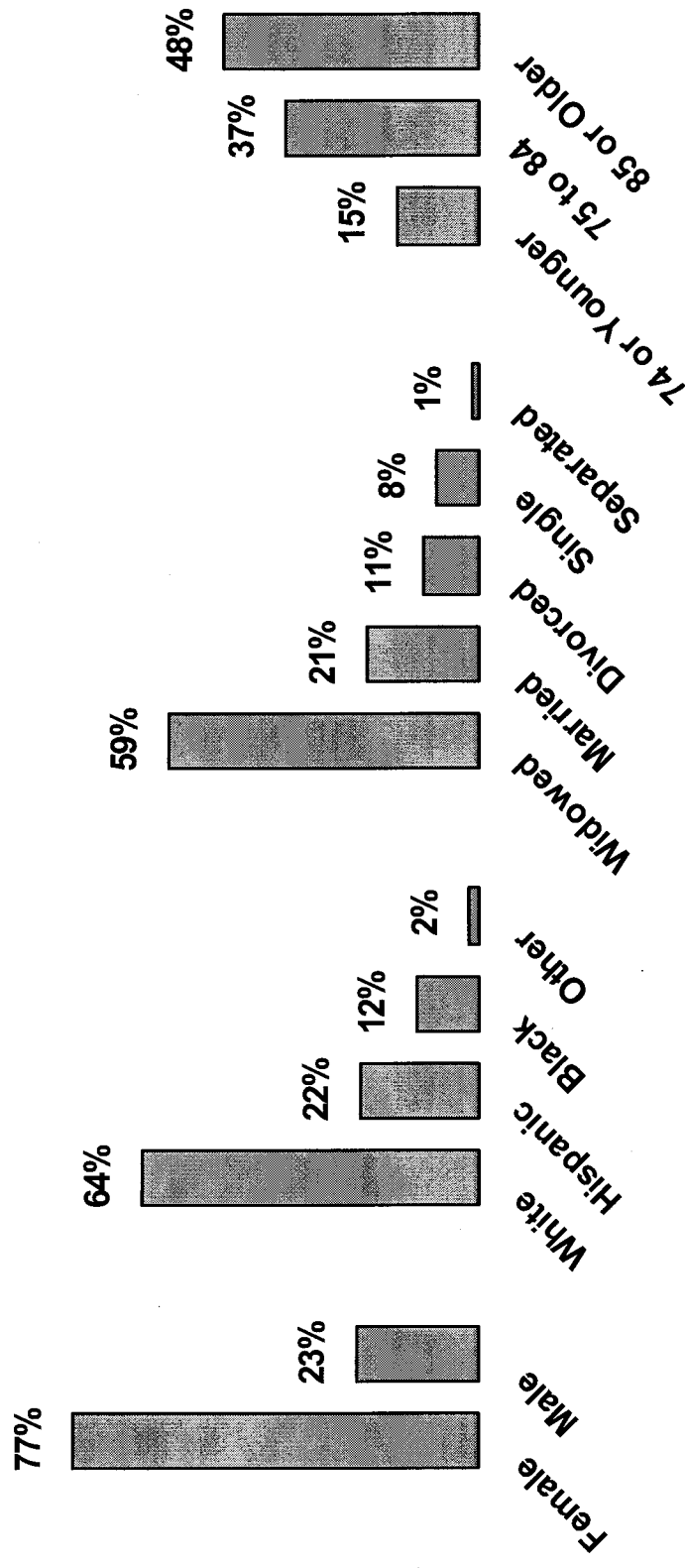
- Enrollment grew from 977 in 2003 to 6,323 in January 2006
- Funding has grown significantly since 1997-98



# **Report Addresses Three Questions**

- What are the characteristics of Nursing Home Diversion participants?
- What types of services are available to Nursing Home Diversion participants and which are the most used?
- Does service use differ depending on living situation or client characteristics?

# Q1: What Are NHD Client Characteristics?



# Clients Need Assistance With Daily Activities

Did Not Need Help or Used Assistive Devices			
Needed Some or Total Assistance		Needed Supervision or Coaching	
Activities of Daily Living (ADLs)			
Bathing	89.50%	7.30%	3.20%
Dressing	76.60%	14.50%	8.90%
Eating	30.10%	25.60%	44.30%
Toileting	55.50%	22.70%	21.80%
Transferring	45.00%	30.00%	25.00%
Walking	44.90%	32.30%	22.80%
Instrumental ADLs (IADLs)			
Heavy Housework	99.70%	0.20%	0.10%
Light Housework	98.70%	0.60%	0.70%
Meals	96.80%	1.60%	1.60%
Medication	78.00%	11.80%	10.20%
Money	86.90%	2.90%	10.20%
Shopping	98.20%	0.90%	0.90%
Telephone	55.30%	9.80%	34.90%
Transportation	95.20%	2.90%	1.90%

## **Q2: What Types of Services Are Available and Which Services Are Most Used?**

- NHD provides a broad range of long term community based and acute medical services
- Three services used by half or more of NHD participants in calendar year 2004
  - Case management
  - Prescribed drugs
  - Assisted living

## **Q3: Does Service Use Differ Depending on Living Situation or Client Characteristics?**

- Differences in use of services depends on whether clients live at home or in a facility.
- Differences based on age and frailty appear related to living situation.
- Differences in race and gender noted but likely not meaningful.

# Nursing Home Diversion, Part 2

- Will answer two questions
  - How well does the NHD program divert clients from nursing home care?
  - How cost-effective is the NHD program compared to other waiver programs?
- Project is nearing completion

# OPPAGA Contacts

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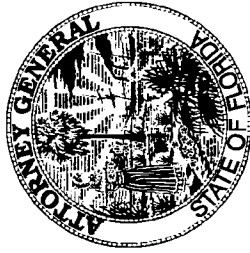


## Office of Program Policy Analysis & Government Accountability

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources.



**ATTORNEY  
GENERAL'S  
PRESENTATION**



# **STATE OF FLORIDA**

**Office of the Attorney General**  
**Charlie Crist**

**“The PANE Initiative”**

**Spencer D. Levine**  
**Director**  
**Medicaid Fraud Control Unit**

# **The “PANE” Initiative**

**Patient**

**Abuse**

**Neglect**

**Exploitation**

- **Partnership with DCF /  
Adult Protective Services**
- **Referral of cases by Adult  
Protective Services  
during or at conclusion  
of investigation**

- **Medicaid Fraud Control Unit accesses HomeSafeNet through cooperative agreement with DCF**
- **MFCU investigates abuse, neglect and exploitation in long term care facilities**

- **“PANE” Initiative**
  - **1 Statewide Lieutenant**
  - **All offices conduct “PANE” investigations**
  - **3 regional Lieutenants supervise Teams in Miami, Tampa and Tallahassee**
  - **Pharmacist and Nurses**
  - **Analysts**

- **Operation Spot Check**
  - **Created in 1994**
  - **Multi Agency initiative with**
    - State Attorney's Office
    - Agency of Health Care Administration
    - Fire Department
    - Statewide Advocacy Council, etc
  - **Each agency handles their own jurisdiction exclusively**
  - **MFCU in addition to coordinating the operation, also reviews Adverse Incident Reports, Resident Trust Accounts, etc.**

- **Current Open Cases  
(as of 1-31-2006)**

<b>Abuse</b>	<b>209</b>
<b>Neglect</b>	<b>285</b>
<b>Exploitation</b>	<b>257</b>

- **Critical Incident Response**